

CALIFORNIA BOARD OF PRISON TERMS

D E C I S I O N

PRESIDING COMMISSIONER GUADERRAMA: The time now is 15 minutes after 10:00 a.m. and all those that are present before the break are back again. Mr. Byrd, we have a unanimous decision. The panel reviewed all the information received from the public and relied on the following circumstances in concluding that you're not suitable for parole and that you would pose an unreasonable risk of danger to society and a threat to public safety if you were to be released from prison. The commitment offense was carried out in a manner which exhibits a callous disregard for the life and suffering of another. The offense was carried out in a dispassionate manner. The victim was abused and defiled during the offense. These conclusions are drawn from the Statement of Facts where you killed a young lady you had hired for sex and strangled and drowned her as she was bound in the bathtub. You later dumped the body. Previous history. You have escalating pattern of criminal conduct and an unstable social history which includes during that period of time you were hiring prostitutes. Institutional behavior. You've programmed in a limited manner while incarcerated. You have not sufficiently participated in beneficial

LESLIE BYRD D-30420 DECISION PAGE 1 (9/24/96)

(1 self-help and therapy programming. The psychiatric
2 factors. The psychological report dated 5/21/96
3 authored by Dr. J. M. Henry is very superficial and I
4 have to agree with your attorney in saying that if
5 these attorneys [sic] aren't doing a good job, get rid
6 of them and I firmly believe that we ought to. The
7 panel makes the following findings that the Prisoner
8 needs therapy in order to face, discuss, understand
9 and cope with stress in a non-destructive manner.
10 Until progress is made, you continue to be
11 unpredictable and a threat to others. Therapy in a
12 controlled setting is needed, but motivation and
13 amenability are questionable. In view of your
14 assaultive history and lack of adequate program
15 participation, there's no indication that you'd behave
16 differently if paroled. Nevertheless, you should be
17 commended for being disciplinary free for your entire
18 incarceration and your involvement in some self-help
19 programs. However, these positive aspects of your
20 behavior do not outweigh the factors of unsuitability.
21 Mr. Byrd, you're being denied parole for five years.
22 The hearing panel finds that it's not reasonable to
23 expect that parole would be granted in a hearing
24 during the following five years. The specific reason
25 for this finding are as follows. One, you committed
26 the offense. Specifically, you beat, bound, strangled
27 **LESLIE BYRD D-30420 DECISION PAGE 2 (9/24/96)**

1 and drown a young female victim during a sexual
2 encounter. As a result, a longer period of
3 observation and evaluation are required before the
4 Board should set a parole date. Second reason is that
5 you have -- a longer period of time is required to
6 evaluate your suitability in view of your history of
7 misconduct, including the employment of prostitutes.
8 Third reason, you have not completed necessary
9 programming which is essential to your adjustment and
10 you need additional time to gain such programming.
11 You certainly need a lot more insight into the life
12 offense than what you demonstrated here today and you
13 need a lot of therapy in order to deal with the
14 problems that you have coming into the (inaudible).
15 The panel recommends that you remain disciplinary free
16 and that you participate in self-help and therapy
17 programming, especially that kind of therapy that
18 would deal with sex crimes. That is the official
19 decision. Again, do whatever you can with programs
20 that are available to you. We can't hold the psych
21 evaluation against you because it wasn't one that you
22 made. However, we've really got some problems with
23 the psych evaluation where they don't address these
24 tremendous problems that you had for the longest
25 period of time and they hardly even mention it.
26 You're not ready. You've got a lot of work to do.

27 LESLIE BYRD D-30420 DECISION PAGE 3 (9/24/96)

78

1 And we are going to ask Ms. Mitchell to submit those
2 photographs in time for the next hearing, if you
3 would, please.

4 DEPUTY DISTRICT ATTORNEY MITCHELL: Yes.

5 COMMISSIONER GIAQUINTO: Can we also ask for
6 the transcript of the interview?

7 DEPUTY DISTRICT ATTORNEY MITCHELL: Yes.

8 PRESIDING COMMISSIONER GUADERRAMA: Thank you
9 very much.

10 DEPUTY DISTRICT ATTORNEY MITCHELL: Now, my
11 question in that regard is do you want that in advance
12 of the next parole hearing or do you want me to submit
13 that at this time so it will be part of his file?

14 PRESIDING COMMISSIONER GUADERRAMA: If you
15 have it available, you can submit it to staff here
16 today.

17 DEPUTY DISTRICT ATTORNEY MITCHELL: I will do
18 that.

19 PRESIDING COMMISSIONER GUADERRAMA: Thank you
20 very much. Here's a copy of the decision. We're
21 going to see you in five years, Mr. Byrd. We want to
22 wish you well. That ends the hearing. It's 20
23 minutes after 10:00 a.m. Good luck.

24 --oOo--

25 PAROLE DENIED FIVE YEARS

26 EFFECTIVE DATE OF THIS DECISION

JAN 15 1997

27 LESLIE BYRD

D-30420

DECISION PAGE 4

(9/24/96)

EXHIBIT #6

**1993 LIFE PRISONER HEARING
EXTRAORDINARY ACTION AND DECISION**

STATE OF CALIFORNIA
BPT 1001A (Rev. 10/89)BOARD OF PRISON TERMS
LIFE PRISONER HEARING - EXTRAORDINARY ACTION AND DECISION

ACTION TYPE (select one)	<input type="checkbox"/> Waiver of Appearance	<input type="checkbox"/> Request for Postponement	<input checked="" type="checkbox"/> Waiver of Parole Consideration Hearing-Stipulation of Unsuitability
HEARING TYPE (select one)	<input checked="" type="checkbox"/> Parole Consideration	<input type="checkbox"/> Progress	<input type="checkbox"/> Rescission
			Hearing Date <u>12-</u>

WAIVER OF RIGHT TO ATTEND HEARING

I understand that I am scheduled for the Board of Prison Terms hearing indicated above.

- ☐ I do not wish to attend my Board hearing and do not wish to be represented at the hearing. The hearing will be held in my absence.
- ☐ I do not personally wish to attend my hearing but I do wish to be represented by counsel at the hearing.
- ☐ I will employ counsel to represent me at the hearing.
- ☐ I cannot afford counsel and wish counsel appointed to represent me.

POSTPONEMENT

I understand that I am scheduled for the Board of Prison Terms hearing indicated above.

- ☐ I hereby request that the hearing indicated above be Postponed to _____.
- The reasons for my request for a postponement are stated below.

WAIVER OF HEARING AND STIPULATION TO UNSUITABILITY

I understand that I am scheduled for the Board of Prison Terms hearing indicated above.

- ☐ I waive my right to a parole consideration hearing and I waive the right to have an attorney represent me at a hearing in my absence. I find that I am unsuitable for parole based on my reasons given on this form and therefore request that you find me unsuitable.
- ☐ One-year Denial ☒ Two-year Denial ☐ Three-year Denial

PRISONER'S REASON(S) FOR REQUEST:

(For Example: Psychiatric Evaluation Not Supportive, Programming Inadequate, Cat H Incomplete, etc.)

Needs to get recommended therapy prior to appearing before the Board of Prison Terms. Would request transfer to institution where such therapy is available.

Signature of Prisoner

Date

12-8-93

Signature of Attorney (if applicable)

Date

12-8-93

Signature and title of Witness (CDC)

Date

12-8-93

NAME _____ CDC NUMBER _____ INSTITUTION _____ CALENDAR _____ DATE _____

BOARD OF PRISON TERMS
LIFE PRISONER HEARING - EXTRAORDINARY ACTION AND DECISIONSTATE OF CALIFORNIA
BPT 1001A (Rev. 10/89)

☐ I certify to the best of my knowledge and information, the foregoing reasons as stated by the prisoner are accurate, and that the prisoner was capable of making a knowledgeable decision regarding his/her hearing.

The following information is submitted for the Board's consideration in making their decision:

COPR Signature

Date

FOR BOARD OF PRISON TERMS USE ONLY

DECISION / ORDER

WAIVER OF RIGHT TO ATTEND HEARING

1. ☐ Request is denied.
☐ Request is granted. Hearing will be conducted in absence of prisoner.

POSTPONEMENT

2. ☐ Request is denied.
☐ Request is granted. Grant based on a finding of good cause. Place on _____ calendar.

WAIVER OF HEARING AND STIPULATION TO UNSUITABILITY

3. ☐ Request is denied.
☒ Request is granted. The Board agrees to enter into the stipulation, on a finding of good cause, offered by the prisoner on the waiver of his/her Life Parole Consideration Hearing and orders a:
☐ One-year denial ☒ Two-year denial* ☐ Three-year denial**

- * The Board must find it unreasonable to expect that the prisoner would be eligible for parole during the second, or second and third year, and the Board must state the reasons for its finding.

- ** In addition to the above (*), the prisoner must have been convicted of more than one offense which involves the taking of a life.

(The basis of the finding of good cause for postponement or multiple-year denial must be stated below.)

- ☒ Good cause based on the reasons given by the prisoner.

Other comments (if applicable):

*Prisoner needs therapy to address his psych problems
 recommend transfer to care or BPD is appropriate
 for C.O.C.*

Signature of BPT Commissioners

1. *[Signature]*
 2. *[Signature]*

Date 12-8-93

Date 12/8/93

BPT Action Taken At:

☐ BPT Headquarters☐ Institution

NAME

BYRD, LESLIE

CDC NUMBER

D-30420

INSTITUTION

MULE PIKE

CALENDAR

DATE

EXHIBIT #7

2006 PSYCHOLOGICAL ASSESSMENT

RICHARD J. DONOVAN CORRECTIONAL FACILITY

HEALTH CARE SERVICES
PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
MENTAL HEALTH EVALUATION

JULY 2006 Calendar

(PSYCHOLOGICAL ASSESSMENT)

I. IDENTIFYING INFORMATION:

Mr. Byrd is a married, 61 year old, Caucasian male who was born on September 8, 1945, to David and Eloise Byrd. Mr. Byrd subscribes to the Catholic faith.

This report is based on a review of the Central File, a review of the medical record and on the results of two, one hour interviews with Mr. Byrd. The consulting issues to be explored were the inmates' psychosexual problems and the estimation of the prisoner's potential for violence in society.

II. DEVELOPMENTAL HISTORY:

According to Mr. Byrd, there were no prenatal or perinatal difficulties in his mothers' pregnancy. He was a full-term infant who, at birth, weighed 8 lbs., 6 oz. He was unfamiliar with any difficulties in his early childhood development. He does note that there were no complications during his delivery. Developmental milestones were reached at the appropriate age. There is no history of cruelty to animals, childhood bedwetting or juvenile fire-setting.

There is no significant childhood medical history. Mr. Byrd, during his early years, was positive for measles, whooping cough, asthma and had a severe case of mononucleosis. His only hospitalization, at the age of 6, was for a tonsillectomy.

III. EDUCATION:

Mr. Byrd was enrolled in kindergarten at age 5 and then entered 1st grade a year later. No particular problems were noted in school in his elementary and high school years. He graduated from Arcadia High School in Arizona in 1963. He went on to receive a Bachelor's of Science degree in Business Administration from the University of Arizona in 1971. During his college years, he noted that his only difficulty with any subject was primarily in quadratic equations, for which he later received tutoring. The subjects that he excelled in during his college years were English, History and Economics.

Upon graduating from college and accepting and later maintaining employment in the banking industry, Mr. Byrd went on to receive a graduate banking degree through the Pacific Coast Banking School in Seattle, Washington. According to a test administered in CDC, Mr. Byrd's Grade level equivalent is 13.8

BYRD, LESLIE

D-30420

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Copy sent to inmate

5/30/06

Case 4:07-cv-00375-SBA Document 2-4 Filed 12/17/2007 Page 41 of 39

It is not what when Mr. Byrd was in high school he was a member of the baseball team and was actively involved in tennis. He was later able to obtain national ranking as one of the top ten players in table tennis. Currently, Mr. Byrd's educational interests include U.S. and European history.

IV. FAMILY HISTORY:

Mr. Byrd notes that his parents were both college graduates. His father, age 89, was a career Navy Officer. He is negative for significant medical problems, mental illness, substance abuse, as well as contact with law enforcement. Mr. Byrd relates that his relationship with his father during his earlier years was limited based upon his father being frequently out of the home. It was also noted that as a child, his family moved every two to three years. Mr. Byrd describes his relationship with his father as good. Mr. Byrd's mother is deceased. He describes her as being an alcoholic. He further describes her as being a bright woman who was primarily a housewife and did teach school at a later time while his family was stationed in Hawaii. Mr. Byrd speaks in a stoic and matter-of-fact way of the stressful quality of his and his siblings lives. Growing with an alcoholic mother, who was inebriated daily, starting the drinking in the early afternoons and continuing until passing out and witnessing the raging arguments between his parents made him decide to go to college as far away from home as possible and to make a decision never to return home. Overall, it appears that given his mothers' alcoholism and his fathers' responsibilities, he and his sisters had to take care of themselves. His mother died in 1977, by drowning in the family's swimming pool.

His younger sister, Carol holds a Master's degree in Social work. Mr. Byrd claims to have a good relationship with his sister. She is also noted to be negative for any significant medical problems, mental illness or substance abuse issues. His older sister holds a Bachelor of Science degree. She is negative for mental illness, substance abuse, as well as contact with law enforcement. She is positive, however, for multiple sclerosis.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Mr. Byrd relates that he first became aware of his body changing at approximately 15 to 16 years of age. He first began dating at age 18 and had his first sexual relationship at age 20. Mr. Byrd considers himself as being heterosexual. He has had only one relationship longer than two months duration which has been with his wife with whom he has been with for approximately 38 years. At no time during his adolescence and young adulthood did Mr. Byrd report engaging in any type of activity that would warrant a diagnosis of apparent emotional disorder. The deviant sexual behaviors described during the crime had not been pervasive or extended over time. According to the reports by Mr. Byrd, they started in late 1984, when after 10 years of being diagnosed with multiple sclerosis, he experienced his first debilitating attack. He had difficulties ambulating, experienced weakness of legs and arms and had frightening episodes of diminished visual acuity.

No one in his family with the exception of his wife, knew about his illness for the previous 10 years. Multiple sclerosis is known to be aggravated by any type of stress. Mr. Byrd was (at that time), experiencing a great deal of the stress produced by conflicts at work. His lending decisions were being overruled by his superiors that were questioning his judgment. The combination of his declining health, his conflicts at work and his personal approach to dealing with stress produced some type of emotional disorder.

BYRD, LESLIE

D-30420

RJDCF/SD

F1-05-138L

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(He to driving for extended periods of time after leaving his office to try to before returning home). It was his time that he became engaged in soliciting prostitutes. The contacts occurred for approximately six or seven months. It was a period where several banks merged and he was part of the designated team in charge of reorganizing the work force. This involved letting go of a number of people which created innumerable conflicts and lawsuits. He remembers working seven days a week for a period of months.

VI. MARITAL HISTORY:

Mr. Byrd married his present wife on December 23, 1967, after a two year courtship. They have been married for approximately 38 years. Mr. Byrd's wife is a few years younger than he. She is currently employed as a school teacher in Tucson, Arizona. From their union, two children were born. Samantha, who is an architect and Sarah, who is a flight attendant, stationed in Chicago. Mr. Byrd characterizes his relationships with his wife and children as being good and very satisfied.

VII. MILITARY HISTORY:

Mr. Byrd has never been a member of the armed forces.

VIII. EMPLOYMENT AND INCOME HISTORY:

Upon leaving college, Mr. Byrd was employed by the Arizona Bank in Phoenix, Arizona from 1971 through 1983. He worked at the Arizona Bank as a vice president. Subsequent to this position, he was employed at the West American Bank in San Rafael. He title was Senior Vice President. He was in charge of a loan portfolio of more than \$700 million dollars. According to the record, his income at that time was approximately \$72,000 per year, in addition to car allowances and bonuses. His current interest is primarily in keeping current in his field by reading financial newspapers and magazines, as well as federal regulations. He would eventually like to return to banking and or work part time in financial counseling.

IX. SUBSTANCE ABUSE HISTORY:

Mr. Byrd does not claim nor is there any record of any type of abuse or dependence upon disinhibiting agents. More to the point having witnessed first hand the ravages of alcoholism and the suffering it produces, it has been a powerful dissuading factor in his and his sisters' decisions not to drink nor smoke.

X. PSYCHIATRIC AND MEDICAL HISTORY:

Mr. Byrd does not claim nor is there any record of any history of psychological illness or disabilities. It is noted, however, that he has been asthmatic since childhood, had a severe case of mononucleosis and that he contracted multiple sclerosis in 1972. Although he was originally hospitalized upon having his first attack, it was not immediately diagnosed as MS. According to the patient's history, Mr. Byrd was diagnosed in 1973 with this illness. He has been hospitalized at various times on occasions, as well as received outpatient treatment throughout the past 29 years. His multiple sclerosis relapses and remits by history with past episodes occurring every two to three years. These episodes have lasted

BYRD, LESLIE

D-30420

RJDCF/SD

F1-05-138L

LF/bl

Case 4:07-cv-00375-SBA Document 2-4 Filed 12/17/2007 Page 23 of 39

approx. solely two months and result in numbness or weaknesses in his feet, legs, arms and hands. Additional involvement has also included optic neuritis in either side along with decreased vision in the right eye. Mr. Byrd's last attack resulted in left and right leg paralysis, lower trunk paralysis and weaknesses, as well as numbness from his upper abdomen to toes along with urinary urgency. Mr. Byrd is currently on Interferon beta-1A, for this condition. Mr. Byrd is also receiving medications for glaucoma.

XI. PLANS IF GRANTED RELEASE:

If Mr. Byrd were to be released, he would move to Tucson, to be with his wife. He further considers his wife, sisters, father and best friend to be in support of him in his attempts to rebuild his life. Although his wife has worked over the years as a school teacher to occupy her time, he states that both of them could live on his pension plan. Job plans, should he be paroled, entail returning to the banking industry or working part time in financial counseling. His primary challenge should he be paroled, would be being paroled to the San Francisco area and being separated from his wife.

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:

Mr. Byrd was interviewed twice. The first time on April 27th for a period of one hour and the second time on May 1st for 45 minutes.

He is in no apparent, acute distress. He moves about in a wheelchair and he is alert and oriented as to time, place, date and purpose for this interview.

He responded to questions in a polite and appropriate way, is attentive, makes effective eye contact and was spontaneously verbal.

All components of memory are grossly intact as far as I can determine without independent verification of the historical facts.

His thinking seems normal from the perspective of productivity, relevance and coherence.

Speech was relevant, appropriate and without evidence of unusual ideation. It showed good grammatical complexity. There is no obvious preoccupation or obsessions with sexual themes. He distinguishes and is able to identify and control behaviors that may be harmful to self or others and acts on his understanding. He has strong executive functions. Reality testing is intact and he is full self-aware. He is able to comprehend behaviors contrary to social values. Sleep pattern is reported as normal. Mood is euthymic with normal fluctuations and affect is congruent.

BYRD, LESLIE

D-30420

RJDCF/SD

F1-05-138L

LF/bl

Case 4:07-cv-06375-SBA Document 2-4 Filed 12/17/2007 Page 24 of 30
 Appetite preserved with no obvious weight changes. The use of alcohol or illicit drugs is denied. There are no obsessions, phobias, ideas of reference, hallucinations nor perceptual disturbances.

He is concerned about his health and appropriately so. Level of intelligence is estimated to be above average. Suicidality and homicidality are absent. He has developed an appropriate understanding of the nature of his crime, its consequences and how it has affected his life, his family's life, and the life of the victim's family.

Clinical diagnosis at the time of this interview.

DIAGNOSES:

Axis I: No diagnosis.

Axis II: No diagnosis.

Axis III: Multiple Sclerosis, Cataracts, Asthma.

Axis IV: Moderate to Severe, consistent of Legal issues.

Incarceration, deterioration of health and separation from family members.

Axis V: Current GAF = Between 75 and 80.

Mr. Byrd appears to have developed an understanding of the factors that influenced the committing of his crime and the need to develop effective and productive means of communicating and showing his feelings.

XIII. REVIEW OF LIFE CRIME:

Upon describing the context of the commitment offense, Mr. Byrd's description and elaboration of the events, both proceeding and during the commission of the offense, did not deviate significantly from that which has already been reported. Mr. Byrd, given the stressors of his work, along with a chronic, debilitating illness, "he was looking for something completely different". As a result he became fascinated with a subset of life which had previously been unknown to him. Overall, however, Mr. Byrd does not excuse nor condone his behavior that eventful night. He reiterates that given the woman's screams and his fear and being discovered that he "panicked" and held the woman underwater for too long a period of time. It does not appear, however, that he had plans or intended the demise of the victim. Although Mr. Byrd appears to be sincerely remorseful for his actions and he also asks, "God, to forgive me", for taking another's life. In his prayers and spiritual search, he is unclear as how he could indeed experience this forgiveness.

As to the causative factors relative to the commitment offense, it would appear from the record that upon the interview with Mr. Byrd, that stress was indeed a factor in his life and his way of resolving it at the time of the commission of the offense, was through sexual release. Since that time, Mr. Byrd has recognized other options related to the reduction of stress in his life.

BYRD, LESLIE

D-30420

RJDCF/SD

F1-05-138L

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XIV. ASSESSMENT OF DANGEROUSNESS:

Mr. Byrd's violence potential outside a controlled setting in the past was considered to have been less than average and at the present, it is estimated to be reduced from that level. If released to the community, he would in all probability be likely to continue improvement given his defined set of expectations and goals, along with family support. He further appears to have internal resources necessary, along with the motivation to be productive and contribute to helping others.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

A review of both the medical, as well as Central File and upon interviewing Mr. Byrd, it appears that he has certainly matured throughout his time in CDCR Facilities. It is also apparent that his direction in life is focused upon assisting others. This is noted for example through his work with the Hand of Peace program, his involvement with the Morals and Values class, his participation in Kairos, and his self-initiated force in tutoring others to pass their G.E.D. Overall, Mr. Byrd displays maturity and self-initiative in serving others by taking size of himself. It further appears that although he has high hopes of being reunited with his family, he does not have any expectations of that occurring any time soon. He appears resigned to the fact that there is "nothing I can do to change my circumstances". He expresses and experiences a sense of guilt, regret and remorse for his prior actions. He is aware of his strengths and his abilities as well as his limitations.

It is my personal opinion that the effects of stress and the worsening of his multiple sclerosis symptoms (with the frightening expectation of blindness and paralysis), and his introverted personality, played an important role in his choices for releasing accumulated, negative emotions, some of them originating in childhood and as a consequence of growing up with an alcoholic mother.



LUISA F. MAN, M.D.
Staff Psychiatrist

D: 05/11/06

T: 05/15/06

BYRD, LESLIE

D-30420

RJDCF/SD

F1-05-138L

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EXHIBIT #8

2001 PSYCHOLOGICAL ASSESSMENT

RICHARD J. DONOVAN CORRECTIONAL FACILITY**HEALTH CARE SERVICES****PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS**

October 2001 Calendar ?

PSYCHOLOGICAL ASSESSMENT**I. IDENTIFYING INFORMATION:**

Mr. Byrd is a married fifty-six-year old Caucasian male who was born on September 8, 1945 to David and Eloise Byrd. Mr. Byrd subscribes to the Catholic faith. He does not have any nicknames nor does he have any type of physically distinguishing characteristics or tattoos.

II. DEVELOPMENTAL HISTORY:

According to Mr. Byrd there were no prenatal or perinatal difficulties in his mother's pregnancy. He was a full term infant who, at birth, weighed eight pounds 6 ounces. He was unfamiliar with any difficulties in his early childhood development. He does note that there were no complications during his delivery. He does not recall if his developmental milestones were within normal limits. As far as he can remember there were no speech, language or motor delays. He further claimed that there were no unusual or peculiar habits and that he interacted well with family members as well as with friends of the same sex and age group. During his early childhood he was primarily involved in activities outside of school which involved children of his own age. There was no history of cruelty to animals, childhood bed wetting, or juvenile fire setting.

There is no significant childhood medical history. Mr. Byrd however, during his early years was positive for measles, whooping cough, and asthma. His only hospitalization during this time was at age six for a tonsillectomy.

III. EDUCATION:

Mr. Byrd was enrolled in kindergarten at age five and then entered first grade a year later. No particular problems were noted in school in his elementary and high school years. He graduated from Arcadia high school in Arizona in 1963. He went on to receive a bachelors of science degree in business administration from the University of Arizona in 1971. During his college years he noted that his only difficulty with any subject was primarily in quadratic equations for which he later received tutoring. The subjects that he excelled in during his college years were English, History and Economics.

BYRD, L. LESLIE**D-30420****F1-05-178L GP/rs**

**BOARD OF PRISON TERMS REPORT
PAGE 2**

Upon graduating from college and accepting and later maintaining employment in the banking industry Mr. Byrd went on to receive a graduate banking degree through the Pacific Coast Banking School in Seattle Washington. In retrospect, Mr. Byrd states that during his college years he was an average student however upon marrying he received A's. According to a test administered in CDC Mr. Byrd's grade level equivalent is 13.8.

It is noted that while Mr. Byrd was in high school was a member of the baseball team and was actively involved in a chess club. He was later able to obtain national ranking as one of the top ten players in table tennis. Currently Mr. Byrd's educational interests include US and European history.

IV. FAMILY HISTORY:

Mr. Byrd notes that his parents were both college graduates. His father, age eighty-three, was a career Navy officer. He is negative for significant medical problems, mental illness, substance abuse as well as contact with law enforcement. Mr. Byrd relates that his relationship with his father during his earlier years was limited based upon his father being frequently out of the home. It was also noted that as a child his family moved every two to three years primarily on the east coast or west coast which later included being stationed in Hawaii. Mr. Byrd however relates that his relationship with his father at this time is described as being good. His mother is deceased. She is negative for mental illness, significant medical problems and contact with law enforcement. Mr. Byrd however describes her as being an alcoholic. He further describes her as being a bright women who was primarily a house wife and did teach school at a later time while his family was stationed in Hawaii. It is noted in the record that his mother had insomnia and frequently got to sleep at approximately five a.m. She would then sleep until noon and start drinking at 5:00 p.m. Overall it appears that given his mother's alcoholism and his father's responsibilities that he and his sisters had to take care of themselves. His mother died in 1977, by drowning in the family swimming pool. Overall, Mr. Byrd's describes his relationship with his mother while growing up as being good.

His younger sister, Carol, age forty-nine, holds a master degree in social work. Mr. Byrd claims to have a good relationship with his sister. She is also noted to be negative for any significant medical problems, mental illness or substance abuse issues. His older sister, age fifty-four, holds a bachelor of science degree. She is negative for mental illness, substance use problems as well as contact with law enforcement. She is positive however, for multiple sclerosis. Overall, Mr. Byrd notes that his relationship with his older sister while growing up was considered as good however now it is considered as being distant.

BYRD, L. LESLIE**D-30420****F1-05-178L GP/rs**

**BOARD OF PRISON TERMS REPORT
PAGE 3****V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:**

Mr. Byrd relates that he first became aware of his body changing at approximately fifteen to sixteen years of age. He first began dating at age eighteen and had his first sexual relationship at age twenty. Mr. Byrd considers himself as being heterosexual. He has had only one relationship longer than two months duration, which has been with his wife with whom has been with for approximately thirty-six years.

According to the record there is a history of high risk behavior, bondage, and reports from prostitutes, who testified at his trial, that Mr. Byrd had fantasies involving homicide and violence toward women.

VI. MARITAL HISTORY:

Mr. Byrd married his present wife on December 23, 1967, after a two-year courtship. They have been married approximately thirty-four-years. Mr. Byrd's wife is a few years younger then he is. She is currently employed as a school teacher in Tucson Arizona. From their union two children were born. Samantha, age twenty-eight, is currently an architect in San Francisco. Mr. Byrd's other daughter, Sara, age twenty-six is a flight attendant stationed in Chicago. Mr. Byrd characterizes his relationships with his wife and children as being good and very satisfying.

VII. MILITARY HISTORY:

Mr. Byrd has never been a member of the armed forces.

VIII. EMPLOYMENT/INCOME HISTORY:

Upon leaving college Mr. Byrd was employed by The Arizona Bank in Phoenix Arizona from 1971 through 1983. He worked at the Arizona bank as a Vice President. Subsequent to this position he was employed at the West America Bank in San Rafael. His title was Senior Vice President. He was in charge of a loan portfolio of more than seven hundred million dollars. According to the record, his income at that time was approximately seventy-two thousand per year in addition to car allowances and bonuses. His current interest is primarily in keeping current in his field by reading financial newspapers and magazines as well as federal regulations. He would eventually like to return to banking and/or work part-time in financial counseling.

IX. SUBSTANCE ABUSE HISTORY:

Mr. Byrd does not claim nor is there any record of any type of abuse or dependence upon disinhibiting agents.

BYRD, L. LESLIE**D-30420****F1-05-178L GP/rs**

**BOARD OF PRISON TERMS REPORT
PAGE 4**

He does note however that he did drink some wine beginning at the age of twenty-two. However, he would only drink approximately two to three glasses of wine per week.

X. PSYCHIATRIC AND MEDICAL HISTORY:

Mr. Byrd does not claim nor is there any record of any history of psychological illnesses or disabilities. It is noted however that he has been asthmatic since childhood and that he contracted multiple sclerosis in 1972. Although he was originally hospitalized upon having his first attack it was not immediately diagnosed as MS. According to the patient's history Mr. Byrd was diagnosed in 1973 with this illness. He has been hospitalized at various times and locations as well as received outpatient treatment throughout the past twenty-nine years. His multiple sclerosis relapses and remits by history with past episodes occurring every two to three years. These episodes have lasted approximately two months and result in numbness or weakness in his feet, legs, arms and hands. Additional involvement has also included optic neuritis in either side along with decreased vision in the right eye. Mr. Byrd's last attack was last May which resulted in left and right leg paralysis, lower trunk paralysis and weakness, as well as numbness from his upper abdomen to toes along with urinary urgency. Mr. Byrd is currently on Interferon beta-1A for this condition. Mr. Byrd is also receiving medication for glaucoma.

XI. PLANS IF GRANTED RELEASE:

If Mr. Byrd were to be released he would move to Tucson to be with his wife. He further considers his wife, sisters, father and best friend to be in support of him in his attempts to rebuild his life. Although his wife has worked over the years as a school teacher to occupy her time he states that both of them could live on his pension plan. Job plans, should he be paroled, entail returning to the banking industry or working part-time in financial counseling. His primary challenge should he be paroled would be being paroled to the San Francisco area and being separated from his wife. He is not aware of any other difficulties or conditions that might be levied should he so paroled. Overall Mr. Byrd's plans appear to be viable in terms of not only having a place to stay but also having the financial means and support necessary to rebuild his life. Overall, there are no specific problems noted at this time.

BYRD, L. LESLIE**D-30420****F1-05-178L GP/rs**

**BOARD OF PRISON TERMS REPORT
PAGE 5****CLINICAL ASSESSMENT****XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:**

In the clinical interview of today, the presentation has been quite similar to the diagnostic picture presented over the past years of which no severe mental disorder is noted. Mr. Byrd was punctual and presented as neatly dressed Caucasian male of medium height and build seated in a wheelchair, which he had navigated to this office. He was cooperative, made good eye contact and exhibited no noticeable aberrant behavior. His affect and mood were slightly upbeat and his speech was clear. Organization of thought processes was clear, sequential and logical. There were no suicidal or homicidal ideations nor did he describe any type of perceptual disturbance. His insight relative to the commitment offense appeared fair and he does have the potential of developing greater self-awareness. Judgment was also noted to be good. His intelligence level, although not formally tested, appeared to be in the above average range.

CLINICAL DIAGNOSES:

- Axis I: 1. Sexual sadism (by history). ← *
2. Adult antisocial behavior.
Axis II: No diagnosis.
Axis III: Multiple sclerosis and asthma.
Axis IV: Incarceration.
Axis V: GAF =80.

Overall Mr. Byrd appears to have made more than a satisfactory adjustment to be prison setting. He further appears to be focused upon improving his life and maintaining his contacts and involvement with his family upon parole. His family appears to give him much emotional support. Mr. Byrd does not have a severe mental disorder, however it may prove useful for him to more fully explore his relationships with women, other than his wife, as well as his method of relating to them sexually.

XIII. REVIEW OF LIFE CRIME:

Upon describing the context of the commitment offense Mr. Byrd's description and elaboration of the events both preceding and during the commission of the offense did not deviate significantly from that which has already been recorded.

BYRD, L. LESLIE**D-30420****F1-05-178L GP/rs**

**BOARD OF PRISON TERMS REPORT
PAGE 6**

Mr. Byrd did add that given the stressors of his work along with a chronic debilitating illness he was looking for "something completely different". As a result he became fascinated with a sub-set of life which had previously been unknown to him. Overall however, Mr. Byrd does not excuse nor condone his behavior that eventful night. He reiterates that given the woman's screams and his fear of being discovered that he "panicked" and held the woman underwater for too long a period of time. It does not appear however that he had plans or intended the demise of the victim. Overall, Mr. Byrd appears to be sincerely remorseful for his actions and in this vein he also asked "God to forgive me" for taking another's life. In his prayers and spiritual search he is unclear as to how he could indeed experience this forgiveness. He also recognizes the harm that he has caused both families in this matter.

As to causative factors relative to the commitment offense it would appear from the record and upon the interview with Mr. Byrd that stress was indeed a factor in his life and his way of resolving it at the time of the commission of the offense was through sexual release/control. Since that time Mr. Byrd has recognized other options related to the reduction of stress in his life.

XIV. ASSESSMENT OF DANGEROUSNESS:

Mr. Byrd's violence potential outside a controlled setting in the past was considered to have been less than average and at present it is estimated to be reduced from that level. If released to the community he would in all probability be likely to continue improvement given his defined set of expectations and goals along with family support that he receives. He further appears to have the internal resources necessary along with the motivation to be productive and contribute to helping others.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

In reviewing both the medical as well as central file and upon interviewing Mr. Byrd it appears that he has certainly matured throughout his time in CDC facilities. It is also apparent that his direction in life is focused upon assisting others. This is noted, for example, through his work with the Hand of Peace Program, his involvement with the morals and values class,

BYRD, L. LESLIE**D-30420****F1-05-178L GP/rs**

**BOARD OF PRISON TERMS REPORT
PAGE 7**

his participation in Kairos, and his self-initiated efforts in tutoring others to pass their GED. Overall Mr. Byrd displays maturity and self-initiative in serving others by taking his eyes off of himself. It further appears that although he has high hopes of being reunited with his family he does not have any expectations of that occurring anytime soon. He appears resigned to the fact that there is "nothing I can do to change my circumstance". He expresses and experiences a sense of guilt, regret and remorse for his prior actions. He is aware of his strengths and his abilities as well as his limitations. He desires however to be of service to others. In closing Mr. Byrd should be removed from the special calendar because psychopathology is not related to future criminal behavior. Psychological opinion would not contribute to a release decision. There are no other recommendations that can be made other than to support the efforts of Mr. Byrd in continuing his service to others and maintaining his connection educationally to his career field.

] Remors
+

GARY PESAVENTO, Ph.D.
Clinical Psychologist

D: 10-01-01
T: 10-02-01

BYRD, L. LESLIE

D-30420

F1-05-178L GP/rs

EXHIBIT #9

CATEGORY "T" FINAL REPORT

CATEGORY "T"

FINAL REPORT

BYRD, LESLIE
CDC# D-30420
F1-2-105L
RICHARD J. DONOVAN CORRECTIONAL FACILITY

RICHARD J. DONOVAN CORRECTIONAL FACILITY
HEALTH CARE SERVICES
CATEGORY "T" FINAL REPORT

<u>INMATE:</u>	Byrd, Leslie
<u>CDC NUMBER:</u>	D-30420
<u>CATEGORY "T" START DATE:</u>	February, 1995
<u>CATEGORY "T" END DATE:</u>	May, 1996
<u>CASE MANAGER:</u>	Ruth Hansen, MSW Psychiatric Social Worker
<u>REPORT WRITER:</u>	J.M. Henry, Ph.D. Senior Psychologist

INTRODUCTION:

Mr. Byrd is a fifty year old inmate on a life term for the crime of second degree murder. He was referred by the BPT for the Category "J" program at Richard J. Donovan Correctional Facility/PSU and was entered into the program by MICC endorsement in January of 1995. He was seen for an initial evaluation in February of 1995 by his Case Manager and presented to the Multidisciplinary Treatment Team during that same month. The Case Manager and this reporter have frequently discussed the issues related to this report.

OPINIONS:

I offer the following opinions based on a review of the Central File, a review of the Medical Record, information from and discussion with other clinicians and their reports, knowledge of the inmate through the Process group and an interview with the inmate.

VIOLENCE POTENTIAL OUTSIDE A CONTROLLED SETTING:

Mr. Byrd's violence potential outside of a controlled setting is considered quite low. The most accurate predictor of future violence is a history of past violence. The inmate does not have a history of violence either as a victim or predator. An assessment in August of 1993 by a staff psychiatrist indicated that his violence potential was lower than the average inmate at that time. More recently, staff psychologist, Dr. Singer further suggested that the inmate's violence potential is quite low. In discussing violence with Mr. Byrd, his self report revealed, "My conception of myself was I was a good person. If there's any message it's this sort of thing can happen to anybody. I don't think I represent a threat to anyone today. My values are so different than what they were."

BYRD, LESLIE D-30420 RJDCF/SD F1-02-105L JH/rmp
D: 05/21/96
T: 05/29/96

**CATEGORY "T" FINAL REPORT
PAGE 2****THE ROLE OF ALCOHOL/DRUGS IN THE COMMITMENT OFFENSE:**

Mr. Byrd had no history of illicit drug use. His use of alcohol was moderate and involved limited social opportunities. There is sufficient documentation on this inmate to support the fact that he has never had nor does he have an alcohol or drug problem. His interest in and willingness to participate in a Substance Abuse group is indicative of this inmate's interest in understanding himself better. It is likely that much of his interest was further piqued by his mother's involvement with alcohol. She had experienced frequent alcoholic black outs and was found dead at age fifty-eight in the swimming pool in their backyard. Mr. Byrd's interest in the Substance Abuse group seemed motivated by his desire to understand the effects of his mother's substance abuse history on his development.

EXPLORATION OF COMMITMENT FACTORS:

It should be mentioned that Mr. Byrd self-initiated his participation in the Category "T" process. There is ample documentation that he requested an opportunity to participate in this program for the purposes of determining the factors that led to his crime. He has been consistent in seeking information to help him understand this tragedy. Some of the specific factors that he has identified include a lack of communication with his parents, a history of repressing emotions and anger, learning to be intolerant with himself, feelings of inadequacy and limited self worth, being introverted, the influence of an alcoholic mother and an absent father. He further realizes that he has had unrealistic self-expectations and has learned to insulate himself from his feelings. At this point he has gone from intellectualizing his feelings to recognizing them and acting on them more appropriately. Considering the other successes in his life, prior to this crime, it is not surprising that he has been appropriately zealous in exploring the factors that contributed to his early development and later were influential in the instant offense.

REMORSE:

Mr. Byrd's own self report perhaps offers the most eloquent testimony to his remorse for his crime. He stated, "I think about it every day, it's the first thing I think of everyday. The remorse gets worse as my daughters get close to the age of my victim. My victim was innocent. There's nothing she did to precipitate my behavior. I thought several times about writing them but I don't think they want to hear from me. I think it would just hurt them more."

BYRD, LESLIE D-30420 RJDCF/SD FL-02-105L JH/rmp

D: 05/21/96

T: 05/29/96

**CATEGORY "T" FINAL REPORT
PAGE 3**

This writer has known Mr. Byrd for the fourteen months of his Category "T" participation. He was also a participant in the writer's Communication group. He has frequently discussed his remorse on a formal and an informal basis in a number of settings. He is consistent with his feelings and emotions. In discussing remorse for this report, he had to pause a number of times to regain his composure. In this writer's opinion, Mr. Byrd's remorse is appropriate, pervasive, and genuine.

NEED FOR FURTHER TREATMENT:

No further individual or group therapy is seen as necessary to prepare Mr. Byrd to return to the community. The soul searching and hard work of attempting to answer "why" has been accomplished. There is little more of a substantive nature to consider with respect to Mr. Byrd understanding causes of his behavior or being concerned for his penchant for violence in the future. As always, should the inmate choose additional therapy to further develop additional self awareness, that choice should be his. No additional therapy is seen as needed to explore any other commitment-related issues. As stated in Mr. Byrd's Category "T" Clinical Summary, he has benefited optimally from those services available to him.

A further consideration is Mr. Byrd's deteriorating physical health as a result of multiple sclerosis, first diagnosed in 1972. His periods of temporary blindness, paralysis, psychomotor dysfunction and other symptoms associated with his MS have clearly tempered his life and his plans for the future. His twenty-nine year old marriage remains intact as does his contact with his wife and two daughters. Given the circumstances in Mr. Byrd's life, his nonviolent lifestyle with the exception of his commitment offense, the support of his family, his declining health, his educational background, his lack of any substance abuse and his day to day manner of getting the most good out of the rest of his life. It is highly likely that this inmate represents a minimal risk to society when he is released.

**J.M. HENRY, Ph.D.
Senior Psychologist**

BYRD, LESLIE D-30420 RJDCF/SD F1-02-105L JH/rmp
D: 05/21/96
T: 05/29/96

**CATEGORY "T" FINAL REPORT.
PAGE 4**

ACKNOWLEDGMENT:

I have read the Category "T" Final Board Report and understand the information in it.

 6/21/96
INMATE SIGNATURE/DATE

 6/21/96
FINAL REPORT WRITER

INMATE ADDENDUM SECTION:

I disagree with the Category "T" Final Board Report. I would like to add the following comments.

INMATE SIGNATURE/DATE

FINAL REPORT WRITER

BYRD, LESLIE D-30420 RJDCF/SD F1-02-105L JH/rmp
D: 05/21/96
T: 05/29/96

1 Leslie Arthur Byrd
2 D-30420, F1-05-138L
3 P.O. Box 799001
4 San Diego, CA 92179-9001

E-filing

FILED

DEC 17 2007

5 UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7
8
9
10 In re:

11 LESLIE ARTHUR BYRD
12 Petitioner, Pro Se

13
14 On Habeas Corpus
15
16
17

CV 07

6375

Case No. _____

SBA (PR)

DOCUMENTS IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS

EXHIBITS

18
19
20 10 - 18
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28

EXHIBIT #10

LETTERS OF SUPPORT

Nancy G. Byrd
1865 West Chapala Drive
Tucson, Arizona 85704
March 18, 2006

R.J. Donovan Correctional Facility
Attn: Board of Prison Hearings Desk
P.O. Box 799006
San Diego, CA 92179-9006

Board of Prison Hearings
Re: Byrd, L., D-30420

My husband of thirty-eight years, Leslie Arthur Byrd, has spent the majority of our married years in prison. I have missed him greatly and after the shock of having him gone and losing his support, the support of my best friend, I have continued to love the man he was and the man he is today.

Art has missed seeing his two daughters grow up. When he was sent to prison our youngest daughter was third grade and the oldest in fifth. Now they are living their own lives, but he has missed out on so much. He has been gone for dance recitals, band concerts, graduations, and weddings. He has missed out on good night kisses, checking out prom dates, and walks down wedding aisles. His daughters have been without fatherly advise, monetary backing, vacations together, and so much more.

Beyond the fact that we have suffered without him is the fact that he caused the death of a fellow human being. He deeply regrets this and will probably never forgive or understand his doing this. Art is and always was a person who respected life. One of my fondest memories was when we were at Sea World looking at the tidal pools. A small child was being careless with a sea anemone and Art took the time to tell the boy and our daughters that this was a living creature and needed to be treated with respect.

In prison, Art has tried not to waste his mind and talents. He took classes in computers when they were available, he has always enjoyed working as a clerk, and he has been a respected helper in *Hands of Peace*. I am proud of him for these efforts.

Art's health has become much worse in the last twenty-one years. He was diagnosed with multiple sclerosis thirty-three years ago and has had flare-ups on and off since that time. It was shortly after a particularly bad flare-up that he went to prison. Now, without the steady use of his legs he is unable to walk. At sixty he is slower to recover from set backs and needs to be home where he can get the care he needs.

I feel that my husband has served his time in punishment. Although nothing can truly make up for his crime he can be of better service to his family and humanity at home. I am a teacher fully vested in retirement and can support him if need be. I love him and want to spend my remaining years with him. Please grant him a parole date.

Respectfully,

Nancy G. Byrd

Sarah C. Horton (formerly Byrd)
4757 Mansfield St., Apt. B
San Diego, CA 92116

March 25, 2006

R.J. Donovan Correctional Facility
Attn: Board of Prison Hearings Desk
P.O. Box 799006
San Diego, CA 92179-9006

Board of Prison Hearings
Re: Byrd, L., D-30420

Dear Members of the Board of Prison Hearings:

As the daughter of Leslie Arthur Byrd, D-30420, I am writing to show my support for him and the possibility of his release. He was a great father for the ten years of my life when he was a free man. He has missed so much of my family's lives that cannot be conveyed through phone calls, photos, and brief visits. He missed walking me, (or wheeling me as the case may be,) down the aisle on my wedding day. There have been countless other occasions in the lives of my family when he has been painfully missed.

My father has turned into an old man during his twenty one years of incarceration. He is confined to his wheelchair due to his increasingly debilitating multiple sclerosis. Although he has tried to make the best of prison life through his work there, being an intelligent man, my father has suffered the drudgery of an isolated unchanging world around him.

I beg of you to grant my father a release date. He is a harmless old man who regrets deeply what he has done. I know that as a free man he would contribute to society in a positive way rather than being a burden on taxpayers by remaining in prison. His release would mean so much to my family, especially my dear mother who has waited twenty one years for his homecoming. Please take this plea into consideration.

Sincerely,


Sarah Horton

Samantha C. Byrd
464 West 27th Street Apt. 1-F
Chicago, Illinois 60661
March 17, 20616

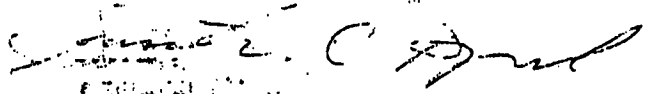
R.J. Donovan Correctional Facility
Attn: Board of Prison Hearings Desk
P.O. Box 799006
San Diego, CA 92179-9006

Board of Prison Hearings
Re: Byrd, L., D-30420

My father, Leslie Arthur Byrd, has been a prisoner in the California Department of Corrections for over twenty years. During this time he has missed seeing my sister and me grow up. We have been punished by not having him near us in these years. I have missed him greatly and due to the location of my job have not been able to even visit him on a regular basis.

I feel that he has served his punishment. I would respectfully request his release from prison in the near future. He is needed at home and in our lives, and we want him back.

Sincerely,



Samantha C. Byrd

February 21, 2006

Board of Prison Hearings
RE: Byrd, L., D-30420

This letter is written in support of Arthur Byrd's parole. I have written a variation of this letter for many years, and each time I write the Board of Prison Hearings I am more convinced that my brother's incarceration no longer serves society. Despite being a model prisoner, Art has served many years beyond his minimum sentence. He has a diagnosis of multiple sclerosis, is wheelchair dependent, and clearly is not a threat to society. His immediate and extended family continues to support him emotionally and is willing and able to assist financially, should he be released from prison. His wife has had a long career as an elementary school teacher and has financial resources for their senior years. Both of his siblings have family businesses that can assist in employment and health costs, if needed.

I work in a medical hemodialysis clinic that serves prisoners and I am well aware of the high costs of chronic medical care being billed to the State of California. In Arthur's case, it seems to be an unnecessary burden on the taxpayers. Art is a prisoner who is ready to re-enter society. He clearly has served his time, has remorse for the past, has a good prison record, and poses no threat to society. I strongly urge you to show compassion and finally grant Arthur parole.

Thank you for your consideration.

Sincerely,



Carol Sullivan

March 6, 2006

Dear Board of Prison Hearings:

D30420

I am writing on behalf of my brother, L. Arthur Byrd. He has been incarcerated for a number of years and is shortly up for parole.

My brother committed a horrible crime for which we are all deeply sorry. However, he is now in a wheelchair permanently and has extreme muscular weakness. He is no longer a threat to anyone and is, in fact, a great expense to the State of California for his necessary medications. I don't know what purpose would be served to keep him longer.

I know there is a campaign that is always waged by the newspapers in Northern California whenever he comes up for parole. The family of his victim, understandably, wants him to remain in jail. However, he has led a model life both before and after his crime. He is neither physically capable nor psychologically predisposed to commit any other crimes. The role his disease, multiple sclerosis, played in his crime is open to question. MS is one of the very few diseases that crosses the blood brain barrier and can cause such things as emotional instability and impotence. Although MS does not turn one into a murderer, the brain functions affected by the disease are only beginning to be understood. My point is only that it may have played a role in what happened that day many years ago.

Art has a wife who is willing to still support him. If released, he would move to Tucson to be with her. He has a family that would ensure his reintegration into society and I can assure you that neither the State of California nor society in general would find him a further burden.

My father is 87 years old and served his country throughout World War II at every major battle. I know this has been his greatest disappointment and we all would like him to see Art going home and being productive before his dies. I hope you will find it within yourselves to show Art some mercy and let him be released.

Sincerely,



Shirley Rector

25 February 2006

**Correctional Counselor I and
The Board of Prison Hearings**

**RE: Inmate L. Byrd
D-30420**

Dear Sir/Madam:

This letter of support is for Inmate Byrd, D-30420, who is scheduled to appear before a Board of Prison Hearings for parole consideration in the near future.

Inmate Byrd and I served part of our incarceration together at Richard J. Donovan Correctional Facility. Inmate Byrd and I met while working together in the Facility 4 Program Office. Our friendship grew and together we spent time working as clerks in support of the Program Staff, Facility Captain and Associate Warden. I found Inmate Byrd to be a quiet and reserved man, a model prisoner with whom I have great respect.

I paroled in March of 1998. Upon completion of my parole in 2001, I vowed to return to the prisons and visit those brothers which had befriended me and had made a positive impact on my own life during my incarceration. Now, even as an accomplished professional in the world business community, it is most important to me to take time to write and visit Inmate Byrd at RJDCF Prison. Inmate Byrd is not a threat to society, and with his current medical care costing the state a large expense, he is an ideal candidate for parole. I have met his family and he has strong family support from his wife and children.

Although I can offer nothing more than a kind word on the behalf of Inmate Byrd--because of my own status as an ex-felon--I would still challenge you look closely at the man I know, and thoughtfully consider his parole release. For he is worthy to be given a second chance at freedom, and if given that chance, to prove he can be successful, law-biding citizen while on parole and beyond. As his health erodes with each passing day, please give him the chance to prove himself.

Best regards,



Dr. Rod Stark

LADAR & KNAPP

ATTORNEYS AT LAW
507 POLK STREET, SUITE 310
SAN FRANCISCO, CALIFORNIA 94102-3339

JERROLD M. LADAR
JOYCE B. LADAR
BERNARD L. KNAPP

TELEPHONE (415) 928-2333
TELECOMER (415) 928-4499

March 22, 1995

Board of Prison Terms
State of California
Attention: CCI Long
Richard J. Donovan Correction Facility
280 Alta Road
San Diego, CA 92179

Re: Leslie Arthur Byrd -- Parole

Dear CCI Long:

I was one of Mr. Byrd's attorneys at his trial in Marin County. He was charged with first degree murder and convicted of second degree murder, the jury having acquitted him of first degree.

His social history, past and present mental state, past criminal history (none), his behavior from the time he was small through the offense were all chronicled in the lengthy transcript of trial. An extensive history of his background and the circumstances leading to and causing the offense were testified to by Dr. Roger Freed, M.D., a psychiatrist and Ann Coho, a psychologist, who tested Mr. Byrd. All these materials and their testimony were placed in the record in open court. Mr. Byrd had offered to plead guilty to second degree murder, accepting responsibility therefore, and stating his remorse for the offense, but this offer was rejected by the District Attorney, thus forcing Mr. Byrd and the County to the extended trial and expense to achieve a conviction for the offense he had offered to admit to in the first place.

The extensive psychiatric and psychological review of Mr. Byrd's case reliably indicated that he had no previous record of violence. He was raised in a home where neither he nor his siblings suffered unusual physical abuse. Over a relatively short period of time he engaged in consensual bondage sex with a series of prostitutes from San Francisco, however he did not inflict injury upon any of them, other than the deceased. There was absolutely no indication of a history of mental problems related to the defendant until a period of extreme stress, which ran less than a year prior to the unfortunate act resulting in Miss Cythia Engstrom's death. His mental

Page 2

situation during this brief period was complicated by the presence of an episode of multiple sclerosis (MS), and his psychological testing revealed absolutely no psychiatric factors which would indicate that he had any potential for recidivism.

Indeed, in respect to the psychiatric and psychological evidence presented at the trial, the prosecution offered no expert witnesses of their own, and the jury accepted the analyses of Dr. Freed and Miss Coho. (Otherwise, they would have returned a different verdict.) The lack of a previous record, the stable social history (Mrs. Byrd stood by him throughout the proceedings), his expressions of remorse, the fact that he committed his crime as a result of a significant stress in his life all are factors which tend to show suitability for parole.

I am not aware of the contents of your file in respect to his understanding and plans for the future and his institutional behavior, but I would assume that they are all positive.

I write to have this letter placed in the file and to inquire whether you have the transcript at the time of sentencing or the trial transcripts (Dr. Freed was on the stand for a substantial number of days).

Very truly yours,

JERROLD M. LADAR

Jerrold M. Ladar

JML/jp
1:2prlbd
cc: Arthur Byrd

EXHIBIT # 11

LAUDATORY / SELF-HELP / WORK CHRONOS

NAME and NUMBER

BYRD, L., D-30420

This is the third recommendation I have written regarding the release of Inmate BYRD. I have known Inmate BYRD for over six years and have served as his direct supervisor on several occasions. Inmate Byrd has always displayed a high degree of skill and maturity in his job performance. In addition to producing a high volume of quality work, he has been instrumental in keeping the paperwork flowing in a timely manner through his excellent working relationships with both staff and other inmates. Several times Inmate BYRD has alerted me to situations in the office and then worked with me to avoid them. He is extremely reliable and maintains a professional attitude at work which includes exhibiting discretion toward any information that crosses his desk.

I would also like to state again that, based on my 31 years experience in the Department of Corrections, I do not feel that Inmate BYRD would re-offend if released from prison. This is not a statement I make lightly. Inmate BYRD is only the second inmate for which I have made such an evaluation. I am aware of Inmate BYRD's commitment offense, but based on my day-to-day observations of him and his interaction with staff, I feel comfortable with my evaluation. My opinion is further supported by Inmate BYRD's deteriorating physical condition. The increasing cost of maintaining Inmate BYRD in prison represents, in my opinion, both an unwarranted and unnecessary cost to the State.

ORIG: C-file

Writer

CC-I R. Ravelo

Inmate

DATE 01/27/06 LAUDATORY - PAROLE RECOMMENDATION RJDCF

J. W. DRESBACH

Facility Captain

Facility 1


GENERAL CHRONO

NAME and NUMBER BYRD, D30420 RJDCF

CDC-128-B (Rev. 4/74)

The above named inmate has completed 88 hours of training required to become a facilitator for the Friends Outside Creative Conflict Resolution workshops on JANUARY 13, 14, 15, 2006. Inmate BYRD, has received his Training for Trainers Certificate, is eligible to be an Inside Facilitator for future Hands of Peace/Friends Outside workshops, and is commended for his support, interest and conduct in the workshop projects here at R.J. Donovan Correctional Facility.

Original: Records
cc: CCI
Chapel Files
Inmate



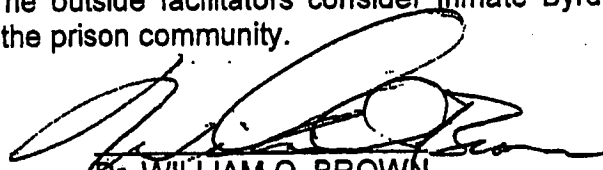
Protestant Chaplain
Activity Group Sponsor

DATE JANUARY 20, 2006 (INFORMATIVE) GENERAL CHRONO

NAME and NUMBER BYRD, L. A., D-30420

Page 1
CDC-128-B (4/74)

Inmate Byrd is to be commended for his substantial role in serving as a member of the Management Team, preparing other inmates to become Inside Facilitators for the Hands of Peace/Alternative to Violence Project Creative Conflict Resolution Workshops. He has not only participated in the training of other facilitators, but has also been instrumental in actively recruiting others inmates to both participate in and become facilitators in the program. The outside facilitators consider Inmate Byrd a valuable resource in the continuing self-help program in the prison community.



Dr. WILLIAM O. BROWN
Protestant Chaplain

C-File
Chapel Files
CCI
Inmate

DATE 01/23/06 LAUDATORY CHRONO RJDCF

NAME and NUMBER

BYRD, D SBA

Document 3

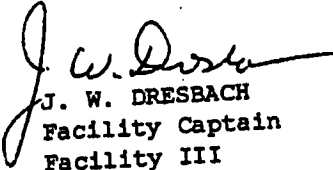
Filed 12/17/2007

Page 14 of 40

This is the second recommendation I have written regarding the release of Inmate BYRD. I have known Inmate BYRD for over five years and have also served as his direct supervisor on several occasions. Inmate BYRD has always displayed a high degree of skill and maturity in his job performance. In addition to producing a high volume of quality work, he has been instrumental in keeping the paperwork flowing in a timely manner through his excellent working relationships with both staff and other inmates. Several times Inmate BYRD has alerted me to situations in the office and then worked with me to avoid them. He is extremely reliable and maintains a professional attitude at work which includes exhibiting discretion toward any information that crosses his desk.

I would also like to state again that, based on my over 30 years of experience in the Department of Corrections, I do not feel that Inmate BYRD would re-offend if released from prison. This is not a statement I make lightly. Inmate BYRD is only the second inmate for which I have made such an evaluation. I am aware of Inmate BYRD's commitment offense, but based on my day-to-day observations of him and his interaction with staff, I feel comfortable with my evaluation. My opinion is further supported by Inmate BYRD's deteriorating physical condition. The increasing cost of maintaining Inmate BYRD in prison represents, in my opinion, both an unwarranted and an unnecessary cost to the State.

ORIG: C-FILE
cc: BPT Desk
CCI R. Ravelo
Writer
Inmate


J. W. DRESBACH
Facility Captain
Facility III

DATE 09/06/05

(PAROLE RECOMMENDATION)

RJDCF

GENERAL CHRO

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128-B REV. 4/74

NAME and NUMBER

BYRD, L.

D-30420

I have known Inmate BYRD for approximately five years, during which period I have been his supervisor on several occasions. For the past two years, he has been assigned as the Facility IV Reception Center Captain's Clerk under my direct supervision. Inmate BYRD has always displayed a high degree of skill and maturity in his job performance. He not only produces a high volume of quality work, but he has been instrumental in keeping the paperwork flowing in a timely manner through his excellent working relationships with both staff and other inmates. Several times Inmate BYRD has alerted me to situations in the office that represented potential problems and then worked with me to avoid them. He is extremely reliable and maintains a professional attitude toward his work that includes exhibiting discretion toward any information that crosses his desk.

I would also like to state that, based on my nearly 29 years of experience in the Department of Corrections, I do not feel that Inmate BYRD would re-offend if released from prison. This is especially true in light of his deteriorating physical condition. This is not a statement I make lightly. Inmate BYRD is only the second inmate in 29 years for which I have made such an evaluation. I am aware of Inmate BYRD's commitment offense, but based upon my day-to-day observations of him and his interaction with staff, I feel comfortable in my evaluation.

ORIG: C-File
cc: CCI L. Muniz
Writer
Inmate

J. W. DRESBACH
Facility Captain
Facility IV Reception Center

DATE: 02/05/04

(LAUDATORY)

RJDCF

GENERAL CHRONO

NAME and NUMBER BYRD, L D30420

5-138

CDC-128-B (Rev. 4/74)

The above named inmate has successfully completed the Basic, 22 hour, Hands of Peace/Friends Outside Creative Conflict Resolution Workshop, held on: JAN 14,15,16,2005 . Inmate participation was voluntary, and inmate BYRD , D30420 , is commended for his interest and conduct throughout the program.

Original: Records
cc: CCI
Chapel files
Inmate


STATE CHAPLAIN
GROUP ACTIVITY SPONSOR

DATE 1,31,05

(LAUDATORY)

GENERAL CHRONO

NAME and NUMBER Byrd D-30420 F1-5-138L

CDC-128-B (Rev. 4/74)

A. Byrd

PARTICIPATED IN THE HANDS OF PEACE/FRIENDS OUTSIDE FACILITATOR

TRAINING-ON-TRAINING WORKSHOP ON November 17,2003

THE WORKSHOP INVOLVED 10 HOURS OF TRAINING BY HANDS OF PEACE OUTSIDE FACILITATORS,
FOR TECHNIQUES AND PROGRAMS FOR THE CREATIVE CONFLICT RESOLUTION WORKSHOPS.

ORIGINAL: RECORDS
CC: CCI
CHAPEL FILES
INMATE


STATE CHAPLAIN

DATE November 17,2003

(LAUDATORY)

GENERAL CHRONO

NAME and NUMBER BYRD D-30420

CDC-128-B (Rev. 4/74)

PARTICIPATED IN THE HANDS OF PEACE/FRIENDS OUTSIDE FACILITATOR

TRAINING-ON-TRAINING WORKSHOP ON

THE WORKSHOP INVOLVED 10 HOURS OF TRAINING BY HANDS OF PEACE OUTSIDE FACILITATORS,
FOR TECHNIQUES AND PROGRAMS FOR THE CREATIVE CONFLICT RESOLUTION WORKSHOPS.

ORIGINAL: RECORDS
CC: CCI
CHAPEL FILES
INMATE


STATE CHAPLAIN

DATE 08-08-03

(LAUDATORY)


GENERAL CHRONO

NAME and NUMBER BYRD, L. D-30420 F1-05-138L

CDC-128-B (Rev. 4/74)

Inmate BYRD, L., D-30420, served as an Inside Facilitator Mentor, mentoring new Facilitators during the Hands of Peace/Friends Outside Creative Conflict Resolution Workshop held on February 7, 8, 9, 2003. To become a Facilitator involves a minimum of 88 hours of training. Inmate BYRD's support, interest and conduct during this workshop are to be commended.

Original: C-FILE
cc: CCI
Chapel Files
Inmate


Chaplain B. Brown
State Chaplain
Activity Group Sponsor

DATE 2-09-03

(LAUDATORY)

RJDCF

GENERAL CHRONO

NAME and NUMBER BYRD D30420 F1-5-138L

CDC-128-B (Rev. 4/74)

BYRD, D30420 SERVED AS AN INSIDE FACILITATOR FOR THE HANDS OF PEACE/
FRIENDS OUTSIDE CREATIVE CONFLICT RESOLUTION WORKSHOP ON OCTOBER 18-20, 2002
TO BECOME A FACILITATOR INVOLVES A MINIMUM OF 88 HOURS OF TRAINING. HIS SUPPORT,
INTEREST AND CONDUCT IN THE WORKSHOP PROJECTS ARE COMMENDABLE.

ORIGINAL: RECORDS
CC: CCI
CHAPEL FILES
INMATE


STATE CHAPLAIN
ACTIVITY GROUP SPONSOR

DATE OCTOBER 22, 2002 (LAUDATORY)

GENERAL CHRONO

NAME and NUMBER BYRD D30420 F1-5-138L

CDC-128-B (Rev. 4/74)

BYRD, D30420 SERVED AS AN INSIDE FACILITATOR FOR THE HANDS OF PEACE/
FRIENDS OUTSIDE CREATIVE CONFLICT RESOLUTION WORKSHOP ON JULY 5-7, 2002
TO BECOME A FACILITATOR INVOLVES A MINIMUM OF 88 HOURS OF TRAINING. HIS SUPPORT,
INTEREST AND CONDUCT IN THE WORKSHOP PROJECTS ARE COMMENDABLE.

ORIGINAL: RECORDS
CC: CCI
CHAPEL FILES
INMATE


STATE CHAPLAIN
ACTIVITY GROUP SPONSOR

DATE JULY 9, 2002

(LAUDATORY)

GENERAL CHRONO

NAME and NUMBER BYRD D30420 F1-5-138L

CDC-128-B (Rev. 4/74)

BYRD, D30420, SERVED AS AN INSIDE FACILITATOR FOR THE HANDS OF PEACE/
FRIENDS OUTSIDE CREATIVE CONFLICT RESOLUTION WORKSHOP ON APRIL 5-7, 2002.
TO BECOME A FACILITATOR INVOLVES A MINIMUM OF 88 HOURS OF TRAINING. HIS SUPPORT,
INTEREST AND CONDUCT IN THE WORKSHOP PROJECTS ARE COMMENDABLE.

ORIGINAL: RECORDS
CC: CCI
CHAPEL FILES
INMATE



STATE CHAPLAIN
ACTIVITY GROUP SPONSOR

DATE APRIL 8, 2002

(LAUDATORY)

GENERAL CHRONO

NAME and NUMBER BYRD D-30420 2-105L

CDC-128-B (Rev. 4/74)

The above named inmate has successfully completed participation as an Inside
Facilitator in the following 22 hour Hands of Peace/Friends Outside Creative
Conflict Resolution workshop held on NOVEMBER 3-5, 2000. Par-
ticipation as a Facilitator is voluntary and inmate BYRD,
is commended for his conduct, interest, and support in the Hands of Peace/
Friends Outside project.

Original: Records
cc: CCI
Chapel Files
Inmate



CHAPLAIN C. M. BREWER
Workshop Coordinator

DATE NOVEMBER 6, 2000

(LAUDATORY)

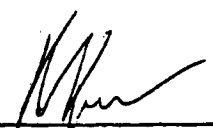
GENERAL CHRONO

NAME and NUMBER BYRD, A. D-30420 1-2-105L

CDC-128-B (Rev. 4/74)

The above named inmate has successfully completed the Basic, 22 hour,
Hands of Peace/Friends Outside Creative Conflict Resolution workshop,
held on: MAY 5 - 7, 2000. Inmate participation was
voluntary, and inmate BYRD, D-30420, is commended
for his interest and conduct throughout the program.

Original: Records
cc: CCI
Chapel Files
Inmate



CHAPLAIN C. M. BREWER
Workshop Coordinator

DATE 5-7-00

(LAUDATORY)

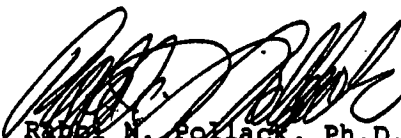
GENERAL CHRONO

NAME and NUMBER BYRD, A., D-30420^e F1-02-105L

CDC-128-B (Rev. 4/74)

The above-named inmate has successfully completed a Morals and Values Class which deals with social issues and is designed to assist the inmate in the development of socialization skills. This inmate is to be commended for his participation in the class and the effort he put forth.

Orig: Central File
cc: Inmate
Chaplain File


Rabbi M. Pollack, Ph.D.
Facility II Chaplain

DATE 4/11/00 (INFORMATIVE)

GENERAL CHRONO

NAME and NUMBER BYRD, L. D-30420 F1-02-225U

CDC-128-B (Rev. 4/74)

The above named inmate has successfully completed the Basic, 22 hour, Hands of Peace/Friends Outside Creative Conflict Resolution workshop, held on: AUGUST 11, 12, 13, 1995. Inmate participation was voluntary, and inmate BYRD, D-30420, is commended for his interest and conduct throughout the program.

Original: Records
cc: CCI
Chapel Files
Inmate


CHAPLAIN C. M. BREWER
Workshop Coordinator

DATE 8-13-95 (LAUDATORY)

GENERAL CHRONO

NAME and NUMBER BYRD, D-30420, 2-105L

CDC-128-B (Rev. 4/74)

The above named inmate has successfully completed the Advanced, 22 hour, Hands of Peace/Friends Outside, Creative Conflict Resolution Workshop held on AUGUST 1-3, 1997. Inmate participation was voluntary, and inmate BYRD, CDC Number, D-30420, is commended for his interest and conduct throughout this program.

Original: Records
cc: CCI
Chapel Files
Inmate


CHAPLAIN C. M. BREWER
Activity Group Sponsor

DATE 8/12/97

(LAUDATORY)


GENERAL CHRONO

NAME and NUMBER BYRD, L. D-30420 F1-02-105L

CDC-128-B (Rev. 4/74)

During my assignment as Facility 4 Third Watch Program Lieutenant, Inmate BYRD has worked directly for me as the Lieutenant's Clerk. For approximately one (1) year, Inmate BYRD has performed his duties in an exceptional manner completing a high-volume of tasks accurately, efficiently and with little supervision. Inmate BYRD is proficient at disciplinary processing, report preparation, CDC-602 Inmate Appeal formatting, general memoranda and office work. Inmate BYRD is reliable and respectful and is the most competent clerk I have supervised.

Original: C-File
CC: CC-I
Writer
Inmate


A. J. VISS
Correctional Lieutenant
Facility 4 Reception Center

DATE October 30, 1996

(LAUDATORY CHRONO)

RJDCF

GENERAL CHRONO

NAME and NUMBER BYRD, L.


D-30420

F1-02-105L

CDC-128-B (Rev. 4/74)

Inmate BYRD, L., D-30420, has worked as the Facility 4 Lieutenant's Clerk under my direct supervision for approximately seven (7) months. During that time Inmate BYRD has displayed exceptional skills, especially in the areas of disciplinary processing, report preparation, Incident Reports and general office procedures. He has proven himself to be prompt, reliable and trustworthy in the performance of his duties. He requires little supervision and gets along well with both staff and inmates. I would recommend Inmate BYRD to any prospective supervisor.

ORIG: C-FILE
cc: CC-I
Writer
Inmate


J. S. MACIAS
Correctional Lieutenant
RJD Correctional Facility

DATE 6-18-97

LAUDATORY

RJDCF

GENERAL CHRONO

NAME and NUMBER

BYRD

D-30420

1-2-105L

CDC-128-B (Rev. 4/74)

The above-named inmate has completed the Breaking Barriers Program. This program was developed by the Pacific Institute in Seattle, Washington, and assists in the development of socialization skills that help a person upon reentry into society. This inmate is to be commended for his effort and participation in this program.

DIST:

Orig: Central File
cc: Chaplain
Inmate


Rabbi N. Pollack, Ph.D.
Facility II Chaplain
Richard J. Donovan Correctional Facility

DATE 7-10-96

(INFORMATIVE)

GENERAL CHRONO

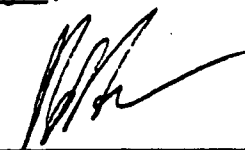
Exhibit #11 Page 9

NAME and NUMBER BYRD, LESLIE, D-30420, 1-2-105L

CDC-128-B (Rev. 4/74)

The above named inmate has successfully completed the Advance, 22 hour, Hands of Peace/Friends Outside Creative Conflict Resolution workshop held on MARCH 15-17, 1996. Inmate participation was voluntary, and inmate BYRD, D-30420, is commended for his interest and conduct throughout this program.

Original: Records
cc: CCI
Chapel Files
Inmate


CHAPLAIN C. M. BREWER
Workshop Coordinator

DATE MARCH 19, 1996

(LAUDATORY)

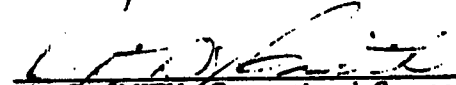
GENERAL CHRONO

NAME and NUMBER BYRD, L. D-30420 FI-02-105L

CDC-128-B (Rev. 4/74)

Inmate BYRD, L., D-30420 has worked for me as Lieutenant's Clerk in the Facility 4 Reception Center Program Office for approximately one (1) year. During that time he had demonstrated exceptional skills in the areas of disciplinary processing, report preparation and general office procedures. Inmate BYRD has proven himself to be prompt, reliable and trustworthy and performs all tasks in an exemplary manner. He is a self-starter who needs little or no supervision. Inmate BYRD gets along well with both staff and inmates. I would highly recommend Inmate BYRD as a clerk to any prospective supervisor.

Original: Central File
cc: Counselor
Inmate
Writer


D. G. SMITH, Correctional Sergeant
Facility 4 Program Office 3rd Watch
RJD Correctional Facility

DATE 5-30-96

LAUDATORY CHRONO

RJDCF GENERAL CHRONO

NAME and NUMBER BYRD, L.

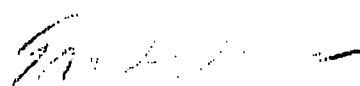
D-30420

FI-02-225U

CDC-128-B (Rev. 4/74)

Inmate BYRD, D-30420, has served as the Facility 4 Program Clerk under my supervision for approximately four (4) months. His duties during that period consisted of typing CDC-115's, Investigative Reports, Disciplinary Dispositions, Memoranda and other documents. He also maintained a number of daily and monthly records including Meal Reports and the Daily Activity Report. Inmate BYRD has proven to be an excellent clerk, completing a high volume of work in an accurate and timely manner. He maintains good working relationships with both staff and fellow inmates and is highly reliable. I recommend him to any prospective supervisor who is looking for a good clerk.

ORIG: C-File
cc: CCI Long
Writer
Inmate


M. G. GRISSOM
Correctional Lieutenant
Facility 4, Third Watch

DATE 12-19-95

(LAUDATORY)

RJDCF

GENERAL CHRONO

NAME NUMBER BYRD, D-30420

(M)

C-14-142-1

CDC 128-B (Rev. 4/74)

Inmate BYRD, D-30420, has been assigned as a Program Lieutenant's Clerk for more than one year. During that time he has demonstrated exceptional performance in the completion of his duties. He gets along well with both staff and inmates, is very reliable, and produces a high volume of quality work. I would recommend him highly to any prospective supervisor. I feel that the constant effort which he has displayed, which includes numerous hours of voluntary overtime, qualifies him to this Laudatory Chrono.

Orig: C-FILE

cc: CC-I

WRITER

LAWYER

J. THOMPSON

Correctional Lieutenant
Walo Creek State Prison

DATE 2/8/90

(LAUDATORY CHRONO)

MCSA-KRM

GENERAL CHRONO

NAME BYRD

CDC No. D30420

SUBJ: "VIEWS" PARTICIPATION

Inmate BYRD, CDC No. D30420 has regularly attended the MCSP Victim Education Workshop Series (VIEWS) group in Facility "C" for over five months. He has actively participated in group discussions and has shown a sincere interest and has improved his understanding of the impact of crime on victims. As group sponsors, we especially appreciate this inmate's positive contributions to the objectives of the VIEWS program and encourage him to continue his education and awareness concerning victims.

M. Aguirre
M. Aguirre, VIEWS Sponsor

R. Johnson
R. Johnson, VIEWS Sponsor

cc: Warden

P.A.

Inmate

C-File

Laudatory Chrono

(MCSP)

CDC 128-B

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

GRADE

ATTITUDE S=SATISFACTORY
U=UNSATISFACTORY

TOTAL CERTIFICATION UNITS IN COURSE:13

VOCATION (VOC): 13

ADULT BASIC EDUCATION (ABE): 0

GENERAL EDUCATION DEVELOPMENT (GED):

HIGH SCHOOL (H.SCH):

ENGLISH SECOND LANGUAGE (ESL):

ADAPTABILITY= S

CONDUCT= S

COOPERATION= S

DEPENDABILITY= S

INITIATIVE= S

TOTAL CERTIFICATION UNITS PRIOR TO QUARTER:6

SPECIFIC CERTIFICATION UNITS COMPLETED: V01.01.01-.06.11

DATE STUDENT ENROLLED: 1/09/91

DATE STUDENT TERMINATED:

REASON FOR TERMINATION:

COMMENTS: Third Quarter. Highly motivated and professional. Employable. Co-author of a major System "Library System". Should be certified in one year and be given ACP exam.

DATE OF CHRONO: 9-30-94

GRADE: S

INSTRUCTOR: Michael MacDonald

COURSE TITLE: Vocational Computer Technology

CDC#: D-30420

NAME: Byrd, Art

INSTITUTION: MCSF-IONE

CDC 128-E (7/89)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

GRADE

ATTITUDE S=SATISFACTORY
U=UNSATISFACTORY

TOTAL CERTIFICATION UNITS IN COURSE:13

VOCATION (VOC): 13

ADULT BASIC EDUCATION (ABE): 0

GENERAL EDUCATION DEVELOPMENT (GED):

HIGH SCHOOL (H.SCH):

ENGLISH SECOND LANGUAGE (ESL):

ADAPTABILITY= S

CONDUCT= S

COOPERATION= S

DEPENDABILITY= S

INITIATIVE= S

TOTAL CERTIFICATION UNITS PRIOR TO QUARTER:8

SPECIFIC CERTIFICATION UNITS COMPLETED: V01.01.01 - .07.11

DATE STUDENT ENROLLED: 1/09/91

DATE STUDENT TERMINATED:

REASON FOR TERMINATION:

COMMENTS: First Quarter. Highly motivated and professional. Exceptional organizational skills. Employable. Working on "Library System".

DATE OF CHRONO: 3-31-94

GRADE: S

INSTRUCTOR: Michael MacDonald

COURSE TITLE: Vocational Computer Technology

CDC#: D-30420

NAME: Byrd, Art

INSTITUTION: MCSF-IONE

EDUCATION PROGRESS REPORT

CDC 128-E (7/89)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

GRADE

ATTITUDE S=SATISFACTORY
U=UNSATISFACTORY

TOTAL CERTIFICATION UNITS IN COURSE:10

ADAPTABILITY= S
CONDUCT= S
COOPERATION= S
DEPENDABILITY= S
INITIATIVE= S

VOCATION (VOC): 10
ADULT BASIC EDUCATION (ABE): 0
GENERAL EDUCATION DEVELOPMENT (GED):
HIGH SCHOOL (H.SCH):
ENGLISH SECOND LANGUAGE (ESL):

SPECIFIC CERTIFICATION UNITS COMPLETED: TOTAL CERTIFICATION UNITS PRIOR TO QUARTER:5
DATE STUDENT ENROLLED: 1-09-91
REASON FOR TERMINATION: DATE STUDENT TERMINATED:

COMMENTS: Fourth Quarter. Center Member responsible for a team of trainee programmers. Has started to work on shop projects and requirements. Exceptional work and organizational skills. Is qualified to be an Apprentice should more positions be created.

DATE OF CHRONO: 12-31-92

GRADE: S

INSTRUCTOR: Michael MacDonald

COURSE TITLE: Vocational Computer Technology

CDC#: D-30420

NAME: Byrd

INSTITUTION: MCSP-IONE

EDUCATION PROGRESS REPORT

STATE OF CALIFORNIA

CCF 128-E (7/89)
DEPARTMENT OF CORRECTIONS

GRADE

ATTITUDE S=SATISFACTORY
U=UNSATISFACTORY

TOTAL CERTIFICATION UNITS IN COURSE:

ADAPTABILITY= S
CONDUCT= S
COOPERATION= S
DEPENDABILITY= S
INITIATIVE= S

VOCATION (VOC):10
ADULT BASIC EDUCATION (ABE):0
GENERAL EDUCATION DEVELOPMENT(GED):0
HIGH SCHOOL (H.SCH):0
ENGLISH SECOND LANGUAGE (ESL):0

TOTAL CERTIFICATION UNITS THIS QUARTER: 5

SPECIFIC CERTIFICATION UNITS COMPLETED: V01.01.01,.02,.05,.06,.07
DATE STUDENT ENROLLED: 1/9/91
DATE STUDENT TERMINATED:
REASON STUDENT TERMINATED:

COMMENTS:SECOND QUARTER.

Completed Panel IV on 5/21/92. Exceptional progress as demonstrated by achieving Center Phase in less than eighteen months. Has begun training other students. Will soon be given assignment of Team Leader.

DATE OF CHRONO: 7-1-92

GRADE: S

INSTRUCTOR: Michael MacDonald

COURSE TITLE: Vocational Computer Technology

CDC#: D-30420

NAME: BYRD, LESLIE

INSTITUTION: MCSP-IONE

EDUCATION PROGRESS REPORT

CCF 128-E (7/89)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

GRADE

ATTITUDE S-SATISFACTORY
U-UNSATISFACTORY

TOTAL CERTIFICATION UNITS IN COURSE:

ADAPTABILITY= S
CONDUCT= S
COOPERATION= S
DEPENDABILITY= S
INITIATIVE= S

VOCATION (VOC):10
ADULT BASIC EDUCATION (ABE):0
GENERAL EDUCATION DEVELOPMENT(GED):0
HIGH SCHOOL (H.SCH):0
ENGLISH SECOND LANGUAGE (ESL):0

TOTAL CERTIFICATION UNITS THIS QUARTER:3**SPECIFIC CERTIFICATION UNITS COMPLETED:** V01.01.01,.05,.06.**DATE STUDENT ENROLLED:** 1-9-91**DATE STUDENT TERMINATED:****REASON STUDENT TERMINATED:**

COMMENTS:FIRST QUARTER. Exceptional performance! Work is detailed, accurate and prompt. Shows all the personal, organizational, and technical skills needed to progress in the trade.

DATE OF CHRONO: 4-1-92**GRADE:** S**INSTRUCTOR:** Michael MacDonald**COURSE TITLE:** Vocational Computer Technology**CDC#:** D-30420**NAME:**BYRD**INSTITUTION:** MCSP-IONE**EDUCATION PROGRESS REPORT**

CDC 128-E (7/89)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

GRADE

ATTITUDE S-SATISFACTORY
U-UNSATISFACTORY

TOTAL CERTIFICATION UNITS IN COURSE:

ADAPTABILITY= S
CONDUCT= S
COOPERATION= S
DEPENDABILITY= S
INITIATIVE= S

VOCATION (VOC):10
ADULT BASIC EDUCATION (ABE):0
GENERAL EDUCATION DEVELOPMENT(GED):0
HIGH SCHOOL (H.SCH):0
ENGLISH SECOND LANGUAGE (ESL):0

TOTAL CERTIFICATION UNITS THIS QUARTER:**SPECIFIC CERTIFICATION UNITS COMPLETED:** V01.01.01,.05,.06**DATE STUDENT ENROLLED:** 1-9-91**DATE STUDENT TERMINATED:****REASON STUDENT TERMINATED:**

COMMENTS: Fourth Quarter. Excellent performance, fast and accurate progress. Has been approved for Apprenticeship Program. Completed Panel 3 on 12-11-91. Very detailed course work.

DATE OF CHRONO: 12-31-91**GRADE:** S**INSTRUCTOR:** Michael
MacDonald**COURSE TITLE:** Vocational Computer Technology**CDC#:** D-30420**NAME:** BYRD, L.A.**INSTITUTION:** MCSP-IONE**EDUCATION PROGRESS REPORT**

CDC 128-E (7/89)

EXHIBIT #12

MATRIX OF BASE TERMS FOR SECOND DEGREE MURDER

CIRCUMSTANCES

FIRST DEGREE MURDER Penal Code § 187 (a) and does not include post conviction credit as provided in § 2200)	CIRCUMSTANCES			
	A. Indirect Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force e.g., shock producing heart attack, a crime partner actually did the killing.	B. Death or Victim Contribution Death was almost immediate or resulted at least partially from contributing factors from the victim e.g., victim initiated struggle or had goaded the prisoner. This does not include victims acting in defense of self or property.	C. Severe Trauma Death resulted from severe trauma inflicted with deadly intensity e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.	D. Terror Victim was subjected to the prolonged infliction of physical pain through acts of cruelty, done prior to act resulting in death.
	I. Participating Victim Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g., crime partner, drug dealer, etc.	25-26-27	26-27-28	27-28-29
	II. Prior Relationship Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.	29-27-28	27-28-29	28-29-30
	III. No Prior Relationship Victim had little or no personal relationship with prisoner; or motivation for act resulting in death was related to the accomplishment of another crime, e.g., death of victim during robbery, rape, or other felony.	27-28-29	28-29-30	29-30-31
	IV. Threat to Public Order or Morality The act resulting in the victim's death was calculated to cause the public to lose confidence in the police, officers, prison guard, public official, fellow prisoner or prisoner, any killing within an institution, or any killing where the prisoner blood and/or used another person to commit the crime.	29-29-30	29-30-31	30-31-32

SUGGESTED BASE TERM

(c) Matrix of Base Terms for Second Degree Murder on or after November 8, 1978.

CIRCUMSTANCES

SECOND DEGREE MURDER Penal Code § 187 (b) and does not include post conviction credit as provided in § 2200)	CIRCUMSTANCES		
	A. Indirect Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force e.g., shock producing heart attack, a crime partner actually did the killing.	B. Death or Victim Contribution Death was almost immediate or resulted at least partially from contributing factors from the victim e.g., victim initiated struggle or had goaded the prisoner. This does not include victims acting in defense of self or property.	C. Severe Trauma Death resulted from severe trauma inflicted with deadly intensity e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.
	I. Participating Victim Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g., crime partner, drug dealer, etc.	15-16-17	16-17-18
	II. Prior Relationship Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.	16-17-18	17-18-19
	III. No Prior Relationship Victim had little or no personal relationship with prisoner; or motivation for act resulting in death was related to the accomplishment of another crime, e.g., death of victim during robbery, rape, or other felony.	17-18-19	18-19-20

SUGGESTED BASE TERM

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3040 and 1041, Penal Code.

HISTORY

- Editorial correction filed 10-8-81; effective thirtieth day thereafter (Register 81, No. 41).
- Amendment of subsection (a) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
- Change without regulatory effect amending subsection (a) to clarify the applicability of the matrices in subsections (b) and (c) when setting the base term for prisoners sentenced to prison for attempted murder, filed 2-16-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 7).

§ 2404. Circumstances in Aggravation of the Base Term.

(a) General. The panel may impose the upper base term or another term longer than the middle base term upon a finding of aggravating circumstances. Circumstances in aggravation of the base term include:

- (1) The crime involved some factors described in the appropriate matrix in a category higher on either axis than the categories chosen as most closely related to the crime;
- (2) The victim was particularly vulnerable;
- (3) The prisoner had a special relationship of confidence and trust with the victim, such as that of employee-employer;
- (4) The murder was committed to preclude testimony of potential or actual witnesses during a trial or criminal investigation;
- (5) The victim was intentionally killed because of his race, color, religion, nationality or country or origin;
- (6) During the commission of the crime the prisoner had a clear opportunity to cease but instead continued;
- (7) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime.

EXHIBIT 13

MULTIPLE SCLEROSIS VERIFICATION

STATE OF CALIFORNIA
 DISABILITY PLACEMENT PROGRAM
 CDC 1845 (Rev. 01/04)

Case 4:07-cv-06375-SBA Document 3
 INITIATION (DPPV)

Filed 12/17/2007

Page 29 of 40

DEPARTMENT OF CORRECTIONS
 CHECK ALL APPLICABLE BOXES

THIS FORM ONLY VERIFIES OR DISCONFIRMS CLAIMED PHYSICAL DISABILITIES LISTED IN SECTION B

INMATE NAME: Byrd, Leslie CDC NUMBER: D30420 INSTITUTION: RSD HOUSING ASSIGNMENT: F1-5-138L DATE FORM INITIATED: 6/21/06

Sections A - B to be completed by licensed medical staff.

SECTION A: REASON FOR INITIATION OF FORM

- ☐ Inmate self-identifies to staff
☒ Observation by staff
☐ Third party evaluation request
☒ Medical documentation or Central File information

SECTION B: DISABILITY BEING EVALUATED

- ☐ Blind/Vision Impaired
☐ Deaf/Hearing Impaired
☐ Speech Impaired
☒ Mobility Impaired

Sections C - G to be completed by a physician only.

SECTION C: PERMANENT DISABILITIES IMPACTING PLACEMENT

1. ☐ FULL TIME WHEELCHAIR USER - DPW
 Requires wheelchair accessible housing and path of travel.
 2. ☒ INTERMITTENT WHEELCHAIR USER - DPO
 Requires lower bunk, wheelchair accessible path of travel and does not require wheelchair accessible cell.
 3. ☐ MOBILITY IMPAIRMENT - With or Without Assistive Device (Wheelchairs shall not be prescribed) - DPM
 Orthopedic, neurological or medical condition that substantially limits ambulation (cannot walk 100 yards on a level surface without pause). Requires lower bunk, no triple bunk, and no stairs in path of travel.
 4. ☐ DEAF/HEARING IMPAIRMENT - DPH
 Must rely on written communication, lip reading or signing as residual hearing, with assistive devices, will not enable them to hear, understand or localize emergency warnings or public address announcements.
 5. ☐ BLIND/VISION IMPAIRMENT - DPV
 Not correctable to central vision acuity of better than 20/200 with corrective lenses in at least one eye (See HOUSING RESTRICTIONS IN SECTION E).
 6. ☐ SPEECH IMPAIRMENT - DPS
 Does not communicate effectively speaking or in writing.

SECTION D: PERMANENT DISABILITIES NOT IMPACTING PLACEMENT

1. NO CORRESPONDING CATEGORY
 2. NO CORRESPONDING CATEGORY
 3. ☐ MOBILITY IMPAIRMENT (Lower Extremities) - DNM
 Walks 100 yards without pause with or without assistive devices.
☐ No Housing Restrictions ☐ See HOUSING RESTRICTIONS in Section E
☐ Requires relatively level terrain and no obstructions in path of travel. Do not place at: CCI, CMC-E, CRC, CTF-C, FSP, SCC I or II, SOL, or SQ. (CDC 128-C: _____)
 4. ☐ HEARING IMPAIRMENT - DNH
 With residual hearing at a functional level with hearing aid(s).
 5. NO CORRESPONDING CATEGORY
 6. ☐ SPEECH IMPAIRMENT - DNS
 Does not communicate effectively speaking, but does when writing.

SECTION E: ADDITIONAL MEDICATION INFORMATION

CSRALERT:

- ☒ Requires relatively level terrain and no obstructions in path of travel
☒ Complex medical needs affecting placement ☐ CDC 128-C _____

HEALTH CARE APPLIANCE / IDENTIFICATION VEST:

- ☐ Cane ☐ Crutch ☐ Walker ☐ Leg/Arm prosthesis ☐ Vest
☒ Other: wheelchair ☐ CDC 128-C(s) dated: 6/21/06

ASSISTANCE NEEDED WITH ACTIVITIES OF DAILY LIVING:

- ☐ Feeding or Eating ☐ Bathing ☐ Grooming ☐ W/C transferring
☐ Toileting ☐ Other: _____ ☐ CDC 128-C(s) dated: _____

OTHER DPP DESIGNATIONS:

- ☐ NONE _____ CODE DATED CODE DATED

HOUSING RESTRICTIONS: ☒ Lower bunk ☒ No stairs ☒ No triple bunk. CDC 128-C(s) dated: 6/21/06

SECTION F: EXCLUSIONS

- ☐ VERIFICATION OF CLAIMED DISABILITY NOT CONFIRMED: My physical examination or other objective data DOES NOT SUPPORT claimed disability. (Explain in Comments Section and CDC 128-C dated: _____).
☐ REMOVAL FROM A DPP CODE: Removal from previous DPP code: _____. (Explain in Comments Section and CDC 128-C dated: _____).
☐ REMOVAL FROM ENTIRE PROGRAM: Removal from DPP code(s): _____. (Explain in Comments Section and CDC 128-C dated: _____).

SECTION G: EFFECTIVE COMMUNICATION FACTORS

- ☐ Uses Sign Language Interpreter (SLI) ☐ Reads Braille ☐ Communicates with written notes ☐ Requires large print or magnifier
☐ Reads lips ☐ NO "EFFECTIVE COMMUNICATION" ISSUES OBSERVED OR DOCUMENTED IN THE UNIT HEALTH RECORD

PHYSICIAN'S COMMENTS: (Focus on affected systems and functional limitations. No specific diagnosis or other confidential medical information.)

patient has chronic lower extremity weakness, multiple sclerosis

PHYSICIAN'S NAME (Print): J. Richards MD PHYSICIAN'S SIGNATURE: [Signature] DATE SIGNED: 6/21/06
 HEALTH CARE MANAGER'S / DESIGNEE'S NAME (Print): Ivy Cho HEALTH CARE MANAGER'S / DESIGNEE'S SIGNATURE: [Signature] DATE SIGNED: 6/21/06

NOTE: After review by the Health Care Manager or Chief Physician & Surgeon, health care staff shall retain green copy for the UHR, send the inmate copy via institutional mail, and route the original and remaining copies to the C&PR/RC CC-III for tracking and further distribution according to the instructions below.

DISTRIBUTION: Original - Top General Chrono Section of C-File; Green - Chrono Section, Unit Health Record; Canary - C&PR/CC-III; Pink-CC-I; Gold-Inmate

NAME and NUMBER **BYRD, LESLIE** **D-30420** **F1-02-225U**

CDC-128

This inmate requires LOWER BUNK/LOWER TIER OTHER

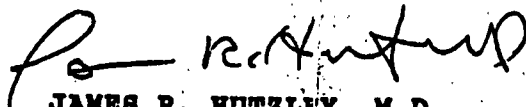
This chrono is to be:

[]
TEMPORARY[XX]
PERMANENT

DUE TO SYMPTOMS OF MULTIPLE SCLEROSIS.

If temporary, this chrono expires at midnight on.

DATE

Orig: C-File
cc: Medical Record
Inmate
Housing Officer
JAMES R. HUTZLEY, M.D.
Staff Physician/SurgeonDATE **MARCH 6, 1996** **RJDCF/SD** **(rs)** **MEDICAL-PSYCHIATRIC-DENTAL**NAME and NUMBER **BYRD, LESLIE** **D-30420** **F1-02-225U**

CDC-128-1

The above named inmate should be status restricted light duty, no prolonged standing, walking due to gradually increasing symptoms of multiple sclerosis. A disease of the nervous system resulting in increasing weakness, lack of coordination, numbness, visual disturbance, etc.

This chrono to remain in force throughout inmate's stay at Richard J. Donovan Correctional Facility.

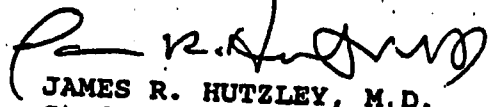
Orig: C-File
cc: Medical Record
Housing Officer
Inmate Assignment
Inmate
JAMES R. HUTZLEY, M.D.
Staff Physician and SurgeonDATE **MARCH 5, 1996** **RJDCF/SD** **(rs)** **MEDICAL-PSYCHIATRIC-DENTAL**

EXHIBIT #14.

BOARD OF PRISON TERMS STATISTICS

VOLUME 2 NUMBER 5

CALIFORNIA LIFE NEWSLETTER #11

SEPTEMBER 2006 PAGE 3

BPH News (from page 2)**STATISTICS****2006 Governor Statistics - As of August 9, 2006**

Offense	Reversed	Declined Review	En Banc (*) Referral	Total
First Degree Murder	18 (95%)	1		19
Second Degree Murder	60 (83%)	12		72
Attempted Murder (*)		0	6 (100%)	6
Aggravated Kidnapping (*)		0	14 (100%)	14

(*) the governor does not have reversal power in these cases

2005 BPT/Governor Parole Statistics**Parole Consideration Hearings Conducted**

4953

Male First-Degree Murder Cases

1820

Female First-Degree Murder Cases

88

Total First-Degree Murder Cases

1408

All Other Cases

3545

Overall Suitability Rate**All BPH Hearings**

3.6% (179/4953)

After Governor Reversals

1.2% (58/4953)

Suitability Rate by Offense**All First-Degree Murder Cases****BPH Hearings**

2.30% (32/1408)

After Governor Reversals

0.36% (5/1408)

Male First-Degree Murder Cases**BPH Hearings**

1.97% (26/1320)

After Governor Reversals

0.08% (1/1320)

Female First-Degree Murder Cases**BPH Hearings**

6.8% (6/88)

After Governor Reversals

4.5% (4/88)

Source: Letter from Governor's Legal Affairs Secretary, June 6, 2006

The number of hearings for female prisoners was obtained from subtracting the number of male cases from the total number of cases

(Continued on page 8)

BPH (from page 4)

Following are tables and excerpts of the Board's parole statistics taken from our files and provided by Carl McQuillion and Michael Brodheim (many thanks!).

Lifer Statistics:1998-2005

	A	B	C	D1/D2	E	F1/F2	G
			# Grants		Net #	Net %	
Year	# Hrgs	Denials	Prop./Eff.	#/% Rev'd	Suitable	Suitable	# Rescinded
1998	2,191	2,047	27/23	3/13%	20	0.91%/0.96%	1
1999	1,951	1,827	21/13	10/77%	3	0.15%/0.16%	1
2000	2,179	1,873	52/37	12/32%	25	1.15%/1.30%	0
2001	3,645	3,098	84/69	33/48%	36	0.99%/1.13%	1
2002	4,826	3,746	168/140	102/73%	38	0.79%/0.97%	3
2003	4,499	2,957	168/158	134/85%	24	0.53%/0.77%	3
2004	4,552	2,620	214/204	128/63%	76	1.67%/2.68%	3
2005	4,952	3,177	161/166*	121/73%	45	0.91%/1.35%	2
	28,798	21,345	895/810	543/67%	257	0.93%/1.20%	15

*Other than reversals, all the statistics here were obtained in discovery from AG James E. Flynn in Brodheim v. DiNimmi, et al., a 42 U.S.C. § 1983 action pending in the U.S. District Court for the Eastern District of California, case no. 2:05-CV-1512 LKK GGH P. Flynn's statistics were "Life Prisoner Hearing and Decision Information" data sheets for calendar years 1998 through 2005 and were compiled by the Board's Management Information Section, Administrative Services Division.

*C1 lists the number of proposed grants. C2 lists the number of effective grants.

*The # of reversals (D1) was obtained from the Governor's Executive Reports. The % reversed (D2) was calculated as (# reversed x 100) / (# eff. grants), i.e., $(D1 \times 100) / C2$.

*The net # suitable (E) was calculated as (# eff. grants - # reversed), i.e., $(C2 - D1)$.

*The net % suitable was calculated in two different ways. The first number (F1) was calculated as $(\text{net \# suitable} \times 100) / (\text{\# hearings})$, i.e., $(E \times 100) / A$. The second number (F2) was calculated as $(\text{net \# suitable} \times 100) / (\text{\# denials} + \text{\# proposed grants})$, i.e., $(E \times 100) / (B + C1)$. The calculations differ somewhat because the # hearings (apparently) includes stipulations and postponements, as well as other miscellaneous-type hearings which do not lead directly to either grants or denials of parole.

*It is not clear why (or how) the number of effective grants could exceed the number of proposed grants in 2005.

VOLUME 2 NUMBER 6

CALIFORNIA LIFER NEWSLETTER #12

NOVEMBER 2006 PAGE 11

LIFER SENTENCES 1940-2005

FOOTNOTES ON PAGE 12

Year	#Hearing	#Suitable	#Rev'd	#Rescinded	%Suitable	Net % Suitable	%Rescinded
1940/41	4264 ^a	2093 ^a		75 ^b	49.05%		1.29%
...							
1978/79 ^c					45%		
1979/80 ^d	515	96			18.64%		
1980/81 ^d	606	78			12.87%		
1981/82 ^d	713	50			6.99%		
1982/83 ^d	818	38			4.64%		
1983/84 ^d	836	53			6.34%		
1984/85 ^d	660	48			7.42%		
1985/86 ^d	841	62			7.37%		
1986/87 ^d	740	48			6.49%		
1987/88 ^d	801	31			3.87%		
1988/89 ^d	473	22			2.51%		
1989/90 ^d	1266	43			3.55%		
1990/91 ^d	1241	63			5.08%		
1991	1813 ^a	50 ^e	6 ^f	7 ^g	2.76%	2.43%	0.39%
1992	1823 ^a	17 ^e	2 ^f	15 ^g	0.93%	0.82%	1.04%
1993	1676 ^a	14 ^e	3 ^f	21 ^g	0.84%	0.69%	1.37%
1994	2019 ^a	9 ^e	1 ^f	23 ^g	0.45%	0.40%	1.14%
1995	2180 ^a	6 ^e	2 ^f	20 ^g	0.28%	0.18%	0.92%
1996	2304 ^a	2 ^e	2 ^f	8 ^g	0.39%	0.30%	0.35%
1997	2286 ^a	13 ^e	1 ^f	2 ^g	0.57%	0.52%	0.09%
1998	2177 ^a	22 ^e	3 ^f	3 ^g	1.01%	0.87%	0.09%
1999	1953 ^a	16 ^e	16 ^f		0.82%	0.31%	
2000	2165 ^a	27 ^e	12 ^f		1.25%	0.69%	
2001	3654 ^k	51 ^e	23 ^f		1.40%	0.59%	
2002	4876 ^m	133 ^e	102 ^f		2.76%	0.64%	
2003	4498 ^o	159 ^e	134 ^f		3.53%	0.56%	
2004	2813	226 ^e	128 ^f		8.00%	3.45%	
2005	4853 ^r	176 ^e	121 ^f		3.61%	1.17%	
Grand Total							
Pre-1979 ^c					50%	50%	
1979/80-							
1982/83	2,694	260	0	0	9.65%	9.65%	
1983/84-							
1990/91	7,260	373	0	0	5.14%	5.14%	
1991-							
1998	16,278	140	20	104	0.86%	0.74%	0.64%
1999-							
2005	24,845	792	550		3.19%	1.01%	
1941-							
2005	41,123	932	560		2.27%	0.90%	

(Footnotes on page 12)

FOOTNOTES: LIFER SENTENCES 1940-2005

- a. Board of Prison Terms and Paroles, 10th Annual Report to the Governor, p. 15.
- b. Id., p. 17.
- c. Estimate based on graph on p. 3 of 1988 EPT Life Prisoner Report.
- d. Statistics on Parole Suitability of Life Prisoners, EPT/MIS Report, Apr. 9, 1992.
- e. EPT Life Prisoner Hearing and Decision Information, Oct. 1, 1999 Report.
- f. Governor's Executive Reports on Parole Review Decisions, 1991-96.
- g. Communication from EPT Public Information Representative, Bill Sessa, July 16, 2003.
- h. Governor's Executive Report on Parole Review Decisions, 1999.
- i. Life Prisoner Hearing and Decision Information for CY 2000, MIS Report.
- j. Governor's Executive Report on Parole Review Decisions, 2000.
- k. Life Prisoner Hearing and Decision Information for CY 2001, MIS Report.
- l. Governor's Executive Report on Parole Review Decisions, 2001.
- m. Communication from EPT Public Information Representative, Bill Sessa, May 9, 2003.
- n. Governor's Executive Report on Parole Review Decisions, 2002.
- o. Communication from EPT Public Information Office, March 15, 2004, as modified by subsequent communication dated July 30, 2004.
- p. Governor's Executive Report on Parole Review Decisions, Nov. 17, 2003 (when Schwarzenegger assumed office) through Dec. 31, 2004.
- q. Does not include 18 en banc referrals (in non-murder cases).
- x. June 6, 2006 letter from Daniel P. Maguire, Deputy Legal Affairs Secretary.
- s. Governor's Executive Report on Parole Review Decisions (CY 2005).
- t. Estimate.

* "net % suitable" = $100 \times (\% \text{ suitable} - \% \text{ reversed}) / (\% \text{ hearings})$

Additional Notes

1. The 1996 totals do not include 1 YK cases found suitable by the Board but reversed by Governor Davis that year.
2. It is unclear whether the Board held any rescission hearings after 1998. It appears, however, that (since that time) en banc reviews have resulted in "reversal" by the Board of many of its own previous suitability findings, so that the actual (or net) number of suitability findings may be less than the figures in the table indicate (even after taking into account reversals by the Governor).
3. The 2001 figures reflect the fact that California courts declared invalid two "reversals" by Governor Davis on the ground that the Governor does not have the authority under California law to "reverse" EPT decisions in the case of those convicted of conspiracy to commit murder.
4. The 1979/80-1982/83 summary figures coincide roughly with the results attributable to the last term of Governor Jerry Brown's administration. The 1983/84-1990/91 summary figures coincide roughly with the results attributable to the two terms of the George Deukmejian administration. The 1991-1998 summary figures coincide roughly with the results attributable to the two terms of the Governor Pete Wilson administration.

**TABLE OF TIME SERVED
FIRST DEGREE MURDER OFFENDERS
YEARS 1986-2005
MEANS & MEDIAN**

1st Degree Murder

YEAR	MEAN	MEDIAN	NUMBER PAROLED
1986	168.9	169.4	33
1987	167.7	157.7	75
1988	158.6	159	42
1989	166.3	166	51
1990	174.6	171.6	33
1991	168.9	169.4	33
1992	205.5	200.3	8
1993	193.7	193.7	2
1994	0	0	0
1995	0	0	0
1996	0	0	0
1997	0	0	0
1998	ISL 361.3 DSL 241.7	ISL 361.3 DSL 241.7	1 1
1999	ISL 286.2	ISL 286.2	2
2000	0	0	0
2001	DSL 251.4	DSL 251.4	1
2002	DSL 240.0	DSL 239.1	3
2003	DSL 253.2	243.2	2
2004	(pre-78 DSL) 342.5 (28.5 yrs) DSL 284.7	(pre-78 DSL) 336.6 (28 yrs) DSL 286.4	7 8
2005	(pre-78 DSL) 372.0 (31 yrs) DSL 290.4 (24.2 yrs)	(pre-78 DSL) 372.0 (31 yrs) DSL 306.3 (25.5 yrs)	2 3

Source: California Department of Corrections, Offender Information Services Branch
Statistics and Analysis (Complete data supporting this chart is at EXHIBIT GG.)

**LIFE PRISONER RELEASES
1979-1987**

Year	Total Heard	Total Granted	Percentage
1979	N/A	N/A	32%
FY 1979/1980	515	96	19%
FY 1980/1981	606	78	13%
FY 1981/1982	715	50	7%
FY 1982/1983	819	36	4%
FY 1983/1984	835	53	6%
FY 1984/1985	661	49	7%
FY 1985/1986	835	61	7%
FY 1986/1987	740	48	5%

Source: Board of Prison Terms (1988)
Boulah Hayward
Management Information Section
&
Board of Prison Terms (1983)
Joan W. Cavanaugh
Executive Officer

2006 PAROLES AS OF AUGUST 9, 2006

PAROLE STATISTICS (Updated) 8/8/2006	Decline to Review	Reverse	On Remand	ACSM
713 Total	13 Total	78 Total	28 Total	0 Total
	13 - 3041.2 0 - 3041.1	78 - 3041.2	28 - 3041.1	0 - 3041.2

BREAKDOWN BY CRIME AND GUBERNATORIAL ACTION (Updated 8/8/2006)	2 nd Degree Murder	1 st Degree Murder	Attempted Murder	Kidnap	Other	Total
Decline to Review	13	1				13
Reverse		18				18
On Remand			6	14		20
ACSM						
Total	13	19	6	14		52

LATE-BREAKING NEWS

GOVERNOR'S STAFF AGAIN REVERSED Court of Appeal Orders Jeffrey Elkins' Release

In re Elkins

__ Cal.Rptr.3d __, __ Cal.App.4th __
2006 WL 3072139

On October 31, the Court of Appeal, First Appellate District, voided still another of Conan's staff's parole reversals, and ordered the petitioner's release on parole forthwith. Elkins, sentenced to 25-to-life for first degree felony murder and robbery in 1980, became eligible to parole on his 1994 MEPPD, but had been denied parole ten times before the eleventh panel found him suitable in 2005. Predictably, Conan's staff reversed the decision, based on the gravity of the offense and the notion that Elkins had insufficient insight because he allegedly accepted responsibility only "recently."

The Court affirmed Elkins' liberty interest in his parole date, and found no evidence to support either of "the Governor's" grounds for reversal. Regarding the offense, committed by a 19-year old drug addict 26 years earlier, described by the Governor's clerks using verbiage they use in all cases: "atrocious," "cold-blooded," "brutal," and "calculated," the court found that the facts cited for reversal pertained more to the robbery and the events occurring after the murder than to the murder itself, which was not planned or calculated, but an after-

thought committed during a robbery, the determinate term for which Elkins had long completed. The court found no evidence to support the Governor's staff's characterization of the murder, and no evidence that the 26-year old offense, given Elkins' exemplary prison record of conduct and reform, and his forensically determined low parole risk, suggests that his parole currently poses and undue risk to public safety.

The court also found the notion that Elkins' acceptance of responsibility was "recent" to be contrary to the record and, in any event, and, as the Lee court held (*supra*), that the recentness of such acceptance is irrelevant as long as it is complete and genuine, as the record indicated in the case.

Finally, the court indicated that aggravating and mitigating offense facts are appropriately considered in setting the term, and noted that Elkins had served 11 years more than his eligible parole date. The court held:

"Thus, a governor, in reviewing a suitability determination, must remain focused not on circumstances that may be aggravating in the abstract, but, rather, on facts indicating that release poses 'an unreasonable risk of danger to society [cites].'"

"Given the lapse of 26 years and the exemplary rehabilitative gains made by Elkins over that time, continued reliance on these aggravating facts of the crime no longer amount to 'some evidence' supporting denial of parole . . . The commitment offense . . . is an unsuitability factor that is immutable and whose predictive value 'may be very questionable after a long period of time' . . . Reliance on an immutable factor, with regard to or consideration of subsequent circumstances, may be unfair, run contrary to the rehabilitative goals."

EXHIBIT #15

MARIN COUNTY SUPERIOR COURT DENIAL

FILED

MAR 19 2007

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: M. Murphy, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

LESLIE ARTHUR BYRD,

Petitioner,

v.

ROBERT J. HERNANDEZ, WARDEN, et al.

Respondent.

)
) Case No. SC 152472A
)
)
)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner Leslie Arthur Byrd is an inmate currently housed in the Richard J. Donovan Correctional Facility, San Diego, California. In 1986 he was convicted in the Marin Superior Court of murder (second degree) and sentenced to fifteen years to life. His requests for parole have been repeatedly denied.

Having reviewed the matter the Court finds that there is no good cause for the granting of the petition. Petitioner's Petition for Writ of *Habeas Corpus* is therefore denied.

Dated: March 19, 2007

Michael R. Murphy

JUDGE OF THE SUPERIOR COURT

EXHIBIT #16

CALIFORNIA COURT OF APPEAL DENIAL

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 1

COPY

In re LESLIE ARTHUR BYRD on Habeas Corpus.

A117276
Marin County No. SC152472A

FILED

MAY 30 2007

Clk. of App. Dist.
DIANA HERBERT

By

BY THE COURT:

The petition for writ of habeas corpus is denied.

The justices participating in this matter were:

Acting Presiding Justice Stein, Justice Swager and Justice Margulies

Date: MAY 30 2007

SWAGER, J.

P.J.

EXHIBIT #17

CALIFORNIA SUPREME COURT DENIAL

S153569

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re LESLIE ARTHUR BYRD on Habeas Corpus

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

NOV 28 2007

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

EXHIBIT #18

In Re CRISCIONE

(ENDORSED)
FILED
AUG 30 2007

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of California, Santa Clara
BET MORROW DEPUTY

In re

No.: 71614

ARTHUR CRISCIONE,

ORDER

On Habeas Corpus

INTRODUCTION

Petitioner alleges that he has been denied due process of law because the Board has used standards and criteria which are unconstitutionally vague in order to find him unsuitable for parole. Alternatively, he argues that those standards, even if constitutionally sound, are nonetheless being applied in an arbitrary and meaningless fashion by the Board. He relies upon evidence that in one hundred percent of 2690 randomly chosen cases, the Board found the commitment offense to be "especially heinous, atrocious or cruel", a factor tending to show unsuitability under Title 15 §2402(c) (1).

Are the Board Criteria Unconstitutionally Vague?

Our courts have long recognized that both state and federal due process requirements dictate that the Board must apply detailed standards when evaluating whether an individual inmate is unsuitable for parole on public safety grounds. (See *In re Dannenberg* (2005) 34

1 Cal.4th 1061 at p. 1096, footnote 16.). Those standards are found in
2 15 CCR §2402(c) (Dannenberg, supra, 34 Cal.4th at p. 1080,) and do
3 include detailed criteria to be applied by the Board when considering
4 the commitment offense:

5 (c) Circumstances Tending to Show Unsuitability. The following
6 circumstances each tend to indicate unsuitability for release.
7 These circumstances are set forth as general guidelines; the
8 importance attached to any circumstance or combination of
9 circumstances in a particular case is left to the judgment of
10 the panel. Circumstances tending to indicate unsuitability
11 include:

12 (1) Commitment Offense. The prisoner committed the offense in an
13 especially heinous, atrocious or cruel manner. The factors to be
14 considered include:

15 (A) Multiple victims were attacked, injured or killed in
16 the same or separate incidents.

17 (B) The offense was carried out in a dispassionate and
18 calculated manner, such as an execution-style murder.

19 (C) The victim was abused, defiled or mutilated during or
20 after the offense.

21 (D) The offense was carried out in a manner which
22 demonstrates an exceptionally callous disregard for human
23 suffering.

24 (E) The motive for the crime is inexplicable or very
25 trivial in relation to the offense.

26 In response to Petitioners claim that the regulations are
27 impermissibly vague, Respondent argues that while "especially
28 heinous, atrocious or cruel" might be vague in the abstract it is
29 limited by factors (A)-(E) of §2402(c) (1), and thus provides a
30 'principled basis' for distinguishing between those cases which are
31 contemplated in that section and those which are not. An examination
32 of cases involving vagueness challenges to death penalty statutes is
33 instructive here and shows that Respondent's position has merit:

34 "Our precedents make clear that a State's capital sentencing

1 scheme also must genuinely narrow the class of persons eligible
2 for the death penalty. When the purpose of a statutory
3 aggravating circumstance is to enable the sentencer to
4 distinguish those who deserve capital punishment from those who
5 do not, the circumstance must provide a principled basis for
6 doing so. If the sentencer fairly could conclude that an
7 aggravating circumstance applies to every defendant eligible for
8 the death penalty, the circumstance is constitutionally infirm."
9 (Arave v. Creech (1993) 507 U.S. 463, 474, citing Maynard v.
10 Cartwright (1988) 496 U.S. 356, 364: "invalidating aggravating
11 circumstance that 'an ordinary person could honestly believe'
12 described every murder," and, Godfrey v. Georgia (1980) 446 U.S.
13 420, 428-429: "A person of ordinary sensibility could fairly
14 characterize almost every murder as 'outrageously or wantonly
15 vile, horrible and inhuman.'")

16 It cannot fairly be said that 'every murder' could be
17 categorized as "especially heinous, atrocious or cruel" under the
18 Board regulations, since the defining factors contained in
19 subdivisions (A)-(E) clearly narrow the group of cases to which it
20 applies. Although Petitioner also argues that the "vague statutory
21 language is not rendered more precise by defining it in terms or
22 synonyms of equal or greater uncertainty" (People v. Superior Court
23 (Engert) (1982) 31 Cal.3d 797, 803, Pryor v. Municipal Court (1979)
24 25 Cal.3d 238, 249. See also Walton v. Arizona (1990) 497 U.S. 639,
25 654), the factors in those subdivisions are not themselves vague or
26 uncertain. The mere fact that there may be some subjective component
27 (such as "exceptionally callous" disregard for human suffering) does
28 not render that factor unconstitutionally vague. The proper degree
of definition of such factors is not susceptible of mathematical
precision, but will be constitutionally sufficient if it gives
meaningful guidance to the Board.

A law is void for vagueness if it "fails to provide adequate
notice to those who must observe its strictures and
impermissibly delegates basic policy matters to policemen,
judges, and juries for resolution on an ad hoc and subjective
basis, with the attendant dangers of arbitrary and

discriminatory application." (*People v. Rubalcava* (2000) 23 Cal.4th 322, 332, quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090, 1116, quoting *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-109.)

A review of cases expressing approval of definitions to limit the application of otherwise vague terms in death penalty statutes leads inextricably to the conclusion that the limiting factors in §2402(c) easily pass constitutional muster. An Arizona statute was upheld that provided a crime is committed in an "especially cruel manner" when the perpetrator inflicts mental anguish or physical abuse before the victim's death," and that "mental anguish includes a victim's uncertainty as to his ultimate fate." (*Walton v. Arizona* (1990) 497 U.S. 639, 654.) Similarly, the court in *Maynard v. Cartwright*, 486 U.S. at 364-365, approved a definition that would limit Oklahoma's "especially heinous, atrocious, or cruel" aggravating circumstance to murders involving "some kind of torture or physical abuse. In Florida, the statute authorizing the death penalty if the crime is "especially heinous, atrocious, or cruel," satisfied due process concerns where it was further defined as "the conscienceless or pitiless crime which is unnecessarily torturous to the victim." *State v. Dixon* (1973) 283 So. 2d 1 at p. 9.

Here, the factors in subdivisions (A)-(E) provide equally clear limiting construction to the term "especially heinous, atrocious, or cruel" in §2402(c).

Has the Board Engaged in a Pattern of Arbitrary Application of the Criteria?

As previously noted, 15 CCR §2402 provides detailed criteria for determining whether a crime is "exceptionally heinous, atrocious or cruel" such that it tends to indicate unsuitability for parole. Our

1 courts have held that to fit within those criteria and thus serve as
2 a basis for a finding of unsuitability, the circumstances of the
3 crime must be more aggravated or violent than the minimum necessary
4 to sustain a conviction for that offense. (*In re Rosenkrantz* (2002)
5 29 Cal.4th 616, 682-683.) Where that is the case, the nature of the
6 prisoner's offense, alone, can constitute a sufficient basis for
7 denying parole. (*In re Dannenberg, supra*, 34 Cal.4th at p. 1095.)

8 Petitioner claims that those criteria, even if constitutionally
9 sound, have been applied by the Board in an arbitrary and capricious
10 manner rendering them devoid of any meaning whatever. The role of
11 the reviewing court under these circumstances has been addressed
12 previously in the specific context of Parole Board actions:

13 "[Courts have] an obligation, however, to look beyond the facial
14 validity of a statute that is subject to possible
15 unconstitutional administration since a law though fair on its
16 face and impartial in appearance may be open to serious abuses
17 in administration and courts may be imposed upon if the
18 substantial rights of the persons charged are not adequately
19 safeguarded at every stage of the proceedings. We have
20 recognized that this court's obligation to oversee the execution
21 of the penal laws of California extends not only to judicial
22 proceedings, but also to the administration of the indeterminate
23 Sentence Law." (*In re Rodriguez* (1975) 14 Cal.3d 639, 648,
24 quoting *Minnesota v. Probate Court* (1940) 309 U.S. 270, 277.)

25 Similarly, in *In re Minnis* (1972) 7 Cal.3d 639, 645, the case
26 closest on point to the present situation, the California Supreme
27 Court stated: "This court has traditionally accepted its
28 responsibility to prevent an authority vested with discretion from
29 implementing a policy which would defeat the legislative motive for
30 enacting a system of laws." Where, as here, the question is whether
31 determinations are being made in a manner that is arbitrary and
32 capricious, judicial oversight "must be extensive enough to protect

1 limited right of parole applicants 'to be free from an arbitrary
2 parole decision... and to something more than mere pro-forma
3 consideration.'" (*In re Ramirez* (2001) 94 Cal.App.4th 549 at p. 564,
4 quoting *In re Stutz* (1974) 11 Cal.3d 258 at p. 268.)

5 This Court, therefore, now examines Petitioner's "as applied"
6 void for vagueness challenge.

7
8 The Evidence Presented

9 A similar claim to those raised here, involving allegations of
10 abuse of discretion by the Board in making parole decisions, was
11 presented to the Court of Appeal in *In re Ramirez*, *supra*. The court
12 there observed that such a "serious claim of abuse of discretion"
13 must be "adequately supported with evidence" which should be
14 "comprehensive." (*Ramirez*, *supra*, 94 Cal.App.4th at p. 564, fn. 5.)
15 The claim was rejected in that case because there was not "a
16 sufficient record to evaluate." (*Ibid.*) In these cases, however,
17 there is comprehensive evidence offered in support of Petitioner's
18 claims.

19 Discovery orders were issued in five different cases involving
20 life term inmates (Petitioners) who all presented identical claims.¹

21
22 ¹ This Court takes judicial notice of the several other cases currently
23 pending (Lewis #68038, Jameison #71194, Bragg #108543, Ngo #127611.) which
24 raise this same issue and in which proof was presented on this same point.
25 (Evidence Code § 452(d). See specifically, in the habeas corpus context,
26 *In re Vargus* (2000) 83 Cal.App.4th 1125, 1134-1136, 1143, in which judicial
27 notice was taken of the evidence in four other cases and in which the court
28 noted: "Facts from other cases may assist petitioner in establishing a
pattern." See generally *McKell v. Washington Mutual, Inc.* (2006) 142
Cal.App.4th 1457, 1491: "trial and appellate courts ... may properly take
judicial notice of ... established facts from both the same case and other
cases." And see *AB Group v. Martin* (1997) 59 Cal.App.4th 1022, 1036:
Judicial notice taken of other cases when matters are "just as relevant to
the present [case] as they are to the others.")

1 The purpose of the discovery was to bring before the Court a
2 comprehensive compilation and examination of Board decisions in a
3 statistically significant number of cases. The Board decisions under
4 examination consisted of final decisions of the Board for life-term
5 inmates convicted of first or second degree murder and presently
6 eligible for parole. Included were all such decisions issued in
7 certain months, chosen by virtue of their proximity in time to the
8 parole denials challenged in the pending petitions. All Board
9 decisions in the months of August, September and October of 2002,
10 July, August, September, October, November, and December of 2003,
11 January and February of 2004, February of 2005, and January of 2006
12 were compiled. This resulted in a review of 2690 cases decided in a
13 total of 13 months.

14 The purpose of the review was to determine how many inmates had
15 actually been denied parole based in whole or in part on the Board's
16 finding that their commitment offense fits the criteria set forth in
17 Title 15 §2402(c)(1) as "especially heinous, atrocious or cruel." A
18 member of the research team conducting the review, Karen Rega,
19 testified that in its decisions the Board does not actually cite CCR
20 rule §2402(c), but consistently uses the specific words or phrases
21 ("verbiage from code") contained therein, so that it could easily be
22 determined when that criteria was being applied. (For example,
23 finding "multiple victims" invokes §2402(c)(1)(A); finding the crime
24 "dispassionate" "calculated" or "execution style" invokes
25 §2402(c)(1)(B); that a victim was "abused" "mutilated" or "defiled"
26 invokes §2402(c)(1)(C); a crime that is "exceptionally callous" or
27 demonstrated a "disregard for human suffering" fits criteria
28

1 §2402(c)(1)(D); and finding the motive for the crime "inexplicable"
2 or "trivial" invokes §2402(c)(1)(E).)

3 Petitioners provided charts, summaries, declarations, and the
4 raw data establishing the above in the cases of Lewis #68038,
5 Jameison #71194, Bragg #108543, and Ngo #127611. In this case
6 (Criscione #71614) the evidence was presented somewhat differently.
7 Both to spread the burden of the exhaustive examination, and to
8 provide a check on Petitioners' methods, this Court ordered
9 Respondent to undertake an examination of two randomly chosen months
10 in the same manner as Petitioner had been doing. Respondent complied
11 and provided periodic updates in which they continued to report that
12 at all "the relevant hearings the Board relied on the commitment
13 offense as a basis for denying parole." (See "Respondent's Final
14 Discovery Update" filed April 5, 2007.) At the evidentiary hearing
15 on this matter counsel for Respondents stipulated that "in all of
16 those cases examined [by Respondent pursuant to the Criscione
17 discovery orders] the Board relied on the commitment offense as a
18 basis for denying parole." (See pages 34-35 of the June 1, 2007,
19 evidentiary hearing transcript.)

20 The result of the initial examination was that in over 90
21 percent of cases the Board had found the commitment offense to be
22 "especially heinous, atrocious or cruel" as set forth in Title 15
23 §2402(c)(1). In the remaining 10% of cases either parole had been
24 granted, or it was unclear whether §2402(c)(1) was a reason for the
25 parole denial. For all such cases, the decisions in the prior
26 hearing for the inmate were obtained and examined. In every case,
27 the Board had determined at some point in time that every inmates
28

1 crime was "especially heinous, atrocious or cruel" under Title 15
2 §2402(c)(1).

3 Thus, it was shown that 100% of commitment offenses reviewed by
4 the Board during the 13 months under examination were found to be
5 "especially heinous, atrocious or cruel" under Title 15 §2402(c)(1).

6 A further statistic of significance in this case is that there
7 are only 9,750 inmates total who are eligible for, and who are
8 currently receiving, parole consideration hearings as life term
9 inmates. (See "Respondant's Evidentiary Hearing Brief," at p. 4,
10 filed April 16, 2007.)

11
12 USE OF STATISTICS

13 In *International Brotherhood of Teamsters v. United States*
14 (1977) 431 U.S. 324, 338-340; the United States Supreme Court
15 reaffirmed that statistical evidence, of sufficient "proportions,"
16 can be sound and compelling proof. As noted by the court in *Everett*
17 *v. Superior Court* (2002) 104 Cal.App.4th 388, 393, and the cases cited
18 therein, "courts regularly have employed statistics to support an
19 inference of intentional discrimination."

20 More recently, the United States Supreme Court, in *Miller-El v.*
21 *Cockrell* (2003) 537 U.S. 322, 154 L.Ed.2d 931, when examining a habeas
22 petitioner's allegations that the prosecutor was illegally using his
23 peremptory challenges to exclude African-Americans from the
24 petitioner's jury, noted that "the statistical evidence alone" was
25 compelling. The high court analyzed the numbers and concluded:
26 "Happenstance is unlikely to produce this disparity." (See also
27 *People v. Hofsheier* (2004) 117 Cal.App.4th 438 in which "statistical
28

1 evidence" was noted as possibly being dispositive. And see *People v.*
2 *Flores* (2006) 144 Cal.App.4th 625 in which a statistical survey and
3 analysis, combined into an "actuarial instrument" was substantial
4 proof.)

5 A statistical compilation and examination such as has been
6 presented in these cases is entirely appropriate and sufficient
7 evidence from which to draw sound conclusions about the Board's
8 overall methods and practices.

9
10 THE EXPERT'S TESTIMONY

11 Petitioners provided expert testimony from Professor Mohammad
12 Kafai regarding the statistics and the conclusions that necessarily
13 follow from them. Professor Kafai is the director of the statistics
14 program at San Francisco State University, he personally teaches
15 statistics and probabilities, and it was undisputed that he was
16 qualified to give the expert testimony that he did. No evidence was
17 presented that conflicts or contradicts the testimony and conclusions
18 of Professor Kafai. By stipulation of the parties, Professor Kafai's
19 testimony was to be admissible and considered in the cases of all
20 five petitioners. (See page 35 of the June 1, 2007, evidentiary
21 hearing transcript.)

22 Professor Kafai testified that the samples in each case, which
23 consisted of two or three months of Board decisions, are
24 statistically sufficient to draw conclusions about the entire
25 population of life term inmates currently facing parole eligibility
26 hearings. Given that every inmate within the statistically
27 significant samples had his or her crime labeled "particularly
28

1 egregious' or "especially heinous, atrocious or cruel" under Title
2 15 §2402(c)(1), it can be mathematically concluded that the same
3 finding has been made for every inmate in the entire population of
4 9,750. Although he testified that statisticians never like to state
5 unequivocally that something is proven to a 100% certainty, (because
6 unforeseen anomalies are always theoretically possible,) he did
7 indicate the evidence he had thus far examined came as close to that
8 conclusion as could be allowed. Not surprisingly, Professor Kafai
9 also testified that "more than 50% can't by definition constitute an
10 exception."

11 Having found the data provided to the expert to be sound this
12 Court also finds the expert's conclusions to be sound. In each of
13 the five cases before the Court over 400 inmates were randomly chosen
14 for examination. That number was statistically significant and was
15 enough for the expert to draw conclusions about the entire population
16 of 9,750 parole eligible inmates. The fact that the approximately
17 2000 inmates examined in the other cases also had their parole denied
18 based entirely or in part on the crime itself (§2402(c)(1)), both
19 corroborates and validates the expert's conclusion in each individual
20 case and also provides an overwhelming and irrefutable sample size
21 from which even a non expert can confidently draw conclusions.

22 23 DISCUSSION

24 Although the evidence establishes that the Board frequently says
25 parole is denied "first," "foremost," "primarily," or "mainly,"
26 because of the commitment offense, this statement of primacy or
27 weight is not relevant to the question now before the Court.
28

1 Petitioners acknowledge that the Board generally also cites other
2 reasons for its decision. The question before this Court, however,
3 is not whether the commitment offense is the primary or sole reason
4 why parole is denied -- the question is whether the commitment
5 offense is labeled "particularly egregious" and thus could be used,
6 under *Dannenberg*, primarily or exclusively to deny parole.

7 The evidence proves that in a relevant and statistically
8 significant period where the Board has considered life term offenses
9 in the context of a parole suitability determination, every such
10 offense has been found to be "particularly egregious" or "especially
11 heinous, atrocious or cruel."² This evidence conclusively
12 demonstrates that the Board completely disregards the detailed
13 standards and criteria of §2402(c). "Especially" means particularly,
14 or "to a distinctly greater extent or degree than is common."³ (EC §
15 451(e).) By simple definition the term "especially" as contained in
16 section 2402(C)(1) cannot possibly apply in 100% of cases, yet that
17 is precisely how it has been applied by the Board. As pointed out by
18 the Second District Court of Appeal, not every murder can be found to
19 be "atrocious, heinous, or callous" or the equivalent without "doing

20 ² In a single case out of the 2690 that were examined Petitioner has conceded that
21 the Board did not invoke §2402(c)(1). This Court finds that concession to be
22 imprudently made and the result of over caution. When announcing the decision at
23 the initial hearing of S. Fletcher (H-10330) on 4/6/06, the commissioner did begin
24 by stating "I don't believe this offense is particularly aggravated..." However
25 the commissioner proceeds to describe the crime as a drug deal to which Fletcher
26 brought a gun so "we could say there was some measure of calculation in that." The
27 commissioner continued by observing that the reason someone would bring a gun to a
28 drug transaction was to make sure things went according to their plan "so I guess
we can say that that represents calculation and perhaps it's aggravated to that
extent." As is the Board's standard practice, by using the word "calculated" from
§2402(c)(1)(b) the Board was invoking that regulation. Certainly if Mr. Fletcher
had brought a habeas petition Respondent's position would be that there is "some
evidence" supporting this. The ambiguity created by the commissioner's initial
statement was cleared up several pages later when he announces that "based upon the
crime coupled with ..." parole was denied for four years. (See *In re Burns* (2006)
136 Cal.App.4th 1318, 1326, holding §2402(c)(1) criteria are necessary for a multi-
year denial.)

1 violence" to the requirements of due process. (In re Lawrence (2007)
2 150 Cal.App.4th 1311, 1997.) This is precisely what has occurred
3 here, where the evidence shows that the determinations of the Board
4 in this regard are made not on the basis of detailed guidelines and
5 individualized consideration, but rather through the use of all
6 encompassing catch phrases gleaned from the regulations.

7
8 THE BOARD'S METHODS

9 Because it makes no effort to distinguish the applicability of
10 the criteria between one case and another, the Board is able to force
11 every case of murder into one or more of the categories contained in
12 §2402(c).

13 For example, if the inmate's actions result in an instant death
14 the Board finds that it was done in a "dispassionate and calculated
15 manner, such as an execution-style murder." At the same time the
16 Board finds that a murder not resulting in near instant death shows a
17 "callous disregard for human suffering" without any further analysis
18 or articulation of facts which justify that conclusion. If a knife
19 or blunt object was used, the victim was "abused, defiled, or
20 mutilated." If a gun was used the murder was performed in a
21 "dispassionate and calculated manner, such as an execution-style
22 murder." If bare hands were used to extinguish another human life
23 then the crime is "particularly heinous and atrocious."

24 Similarly, if several acts, spanning some amount of time, were
25 necessary for the murder the Board may deny parole because the inmate
26 had "opportunities to stop" but did not. However if the murder was

27 ³ Princeton University World Net Dictionary (2006).
28

1 accomplished quickly parole will be denied because it was done in a
2 dispassionate and calculated manner and the victim never had a chance
3 to defend themselves or flee. If the crime occurred in public, or
4 with other people in the vicinity, it has been said that the inmate
5 "showed a callous disregard" or "lack of respect" for the
6 "community." However if the crime occurs when the victim is found
7 alone it could be said that the inmate's actions were aggravated
8 because the victim was isolated and more vulnerable.

9 In this manner, under the Board's cursory approach, every murder
10 has been found to fit within the unsuitability criteria. What this
11 reduces to is nothing less than a denial of parole for the very
12 reason the inmates are present before the Board - i.e. they committed
13 murder. It is circular reasoning, or in fact no reasoning at all,
14 for the Board to begin each hearing by stating the inmate is before
15 them for parole consideration, having passed the minimum eligible
16 parole date based on a murder conviction, and for the Board to then
17 conclude that parole will be denied because the inmate committed acts
18 that amount to nothing more than the minimum necessary to convict
19 them of that crime. As stated quite plainly by the Sixth District:
20 "A conviction for murder does not automatically render one unsuitable
21 for parole." (Smith, supra, 114 Cal.App.4th at p. 366, citing
22 Rosenkrantz, supra, 29 Cal.4th at p. 683.)

23 In summary, when every single inmate is denied parole because
24 his or her crime qualifies as a §2402(c)(1) exception to the rule
25 that a parole date shall normally be set, then the exception has
26 clearly swallowed the rule and the rule is being illegally
27 interpreted and applied. When every single life crime that the Board
28

examines is "particularly egregious" and "especially heinous, atrocious or cruel" it is obvious that the Board is operating without any limits and with unfettered discretion.

Other examples of the failure to 'connect up' the facts of the individual case with the criteria and the ultimate findings abound in the decisions of the reviewing courts. Some of the state cases to have reversed Parole Board or Governor abuses of discretion in denying parole include *In re Roderick*, *In re Cooper*, *In re Lawrence*, *In re Barker*, *In re Gray*, *In re Lee*, *In re Elkins*, *In re Weider*, *In re Scott*, *In re Deluna*, *In re Ernest Smith*, *In re Mark Smith*, and *In re Capistran*.

When "the record provides no reasonable grounds to reject, or even challenge, the findings and conclusions of the psychologist and counselor concerning [the inmate's] dangerousness" the Board may not do so. (*In re Smith* (2003) 114 Cal.App.4th 343, 369.)

When an inmate, although only convicted of a second degree murder, has been incarcerated for such time that, with custody credits, he would have reached his MRPD if he had been convicted of a first, the Board must point to evidence that his crime was aggravated or exceptional even for a first degree murder if they are going to use the crime as a basis for denying parole. (*In re Weider* (2006) 145 Cal.App.4th 570, 582-583.)

This rule, rooted in Justice Moreno's concurrence in *Rosenkrantz*, *supra*, is particularly applicable in this case. Petitioner was convicted of second degree, but acquitted of first degree, murder over 25 years ago. (*People v. Ciriacion* (1981) 125 Cal.App.3d 275.) With his custody credits he is beyond the matrix even had he been convicted of a first. In a currently pending habeas petition in which he challenges his 2007 parole denial the first reason the Board gave was the crime itself and the presiding commissioner explained: "His actions go well beyond the minimum necessary for a conviction of murder in the second degree." (Decision page 2 of 4/2/07 transcript.) For the Board to penalize the Petitioner for the fact that he was acquitted of first degree is further proof of their willfulness and

1 A "petitioner's young age at the time of the offense" must be
2 considered. (In re Elkins (2006) 144 Cal.App.4th 475, 500, quoting
3 Rosenkrantz v. Marshall (C.D.Cal. 2006) 444 F. Supp. 2d 1063, 1065,
4 1085: "The reliability of the facts of the crime as a predictor for
5 his dangerousness was diminished further by his young age of 18, just
6 barely an adult. 'The susceptibility of juveniles to immature and
7 irresponsible behavior means their irresponsible conduct is not as
8 morally reprehensible as that of an adult.'")

9 The Board's formulaic practice of stating §2402(c)(1) phrased in
10 a conclusory fashion, and then stating "this is derived from the
11 facts" without ever linking the two together, is insufficient. (In
12 re Roderick, (2007) ____ Cal.App.4th ____ (A113370): "At minimum, the
13 Board is responsible for articulating the grounds for its findings
14 and for citing to evidence supporting those grounds." (See also In
15 re Barker (2007) 151 Cal.App.4th 346, 371, disapproving
16 "conclusorily" announced findings.)

17 After two decades, mundane "crimes have little, if any,
18 predictive value for future criminality. Simply from the passing of
19 time, [an inmate's] crimes almost 20 years ago have lost much of
20 their usefulness in foreseeing the likelihood of future offenses than
21 if he had committed them five or ten years ago." (In re Lee (2006)
22 143 Cal.App.4th 1400, 1412.) It should be noted that this rule

23 bias. The jury had a reasonable doubt that Petitioner committed first degree
24 murder but under the Board's 'reasoning' and 'analysis' this puts him in a worse
25 position than if they had not. Had the jury convicted him of the greater offense
26 Petitioner has served so much time that he would already be having subsequent
27 parole hearings on a first and the Board would not have been able to use the 'some
28 evidence' of first degree behavior against him. As observed previously, the
Board's position in this regard is "so ridiculous that simply to state it is to
refute it." (Weider, supra, 145 Cal.App.4th at p. 583.)
This point is particularly significant in the case of Mike Ngo. Mr. Ngo was only
18 at the time of his crime. The impetus behind the shooting was youth group or

1 applies with even more force when the Board is relying on any
2 criminality that occurred before the crime. In that situation, just
3 as with the crime itself, the Board must explain why such old events
4 have any relevance and especially when the inmate has spent a decade
5 as a model prisoner.

6 Murders situationally related to intimate relationships are
7 unfortunately commonplace because emotions are strongest in such
8 domestic settings. When a murder occurs because of "stress unlikely
9 to be reproduced in the future" this is a factor that affirmatively
10 points towards suitability. (In re Lawrence (2007) 150 Cal.App.4th
11 1511 and cases cited therein.)

12 "The evidence must substantiate the ultimate conclusion that the
13 prisoner's release currently poses an unreasonable risk of danger to
14 the public. It violates a prisoner's right to due process when the
15 Board or Governor attaches significance to evidence that forewarns no
16 danger to the public." (In re Tripp (2007) 150 Cal.App.4th 306,
17 313.)

18 The Board "cannot rely on the fact that the killing could have
19 been avoided to show the killing was especially brutal." (In re
20 Cooper (2007) 153 Cal.App.4th 1043, 1064.)

21 The Board's focus must be upon how the inmate "actually
22 committed his crimes" not the "incorporeal realm of legal
23 constructs." (Lee, supra, 143 Cal.App.4th at p. 1413.) This is
24 especially significant when the murder conviction is based on the
25 felony murder rule, provocative act doctrine, or accomplice liability
26 such that the inmate did not intend to kill or may not have even been
27 gang rivalries, posturing, and threats which mature adults would not have been
28

the actual killer.

The Board has ample guidance before it in the decisions of the various reviewing courts to constrain its abuse, but has failed to avail itself of the opportunity to do so.

SEPARATION OF POWERS DOCTRINE

The evidence presented, as discussed above, has established a void for vagueness "as applied" due process violation. That same evidence also proves a separate but related Constitutional violation -- an as applied separation of powers violation.

The separation of powers doctrine provides "that the legislative power is the power to enact statutes, the executive power is the power to execute or enforce statutes, and the judicial power is the power to interpret statutes and to determine their constitutionality." (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1068.) Because the evidence has proven the Board is not executing/enforcing the legislature's statutes as intended it is this Court's duty to intervene. The question here is whether the Board is violating the separation of powers doctrine by appropriating to itself absolute power over parole matters and disregarding the limits and guidelines placed by the statute.⁶

"Government Code section 11342.2 provides: 'Whenever by the

caught up in.

"It is settled that Administrative regulations that violate acts of the legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them. They must conform to the legislative will if we are to preserve an orderly system of government. Nor is the motivation of the agency relevant. It is fundamental that an administrative agency may not usurp the legislative function, no matter how altruistic its motives are." (*Agricultural Labor Relations Board v. Superior Court of Tulare County* (1976) 16 Cal.3d 392, 419 quoting *Norris v. Williams* (1967) 67 Cal.2d 733, 737, and *City of San Joaquin v. State Bd. of Equalization* (1970) 9 Cal.App.3d 365, 374.)

1 express or implied terms of any statute a state agency has authority
2 to adopt regulations to implement, interpret, make specific or
3 otherwise carry out the provisions of the statute, no regulation
4 adopted is valid or effective unless consistent and not in conflict
5 with the statute and reasonably necessary to effectuate the purpose
6 of the statute.' Administrative regulations that alter or amend the
7 statute or enlarge or impair its scope are void and courts not only
8 may, but it is their obligation to strike down such regulations."
9 (*Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75
10 Cal.App.4th 1315, 1341, citations omitted.)

11 The vice of overbroad and vague regulations such as are at issue
12 here is that they can be manipulated, or 'interpreted,' by executive
13 agencies as a source of unfettered discretion to apply the law
14 without regard to the intent of the people as expressed by the
15 legislature's enabling statutes. In short, agencies usurp unlimited
16 authority from vague regulations and become super-legislatures that
17 are unaccountable to the people. As it has sometimes been framed and
18 addressed in the case law, a vague or all encompassing standard runs
19 the risk of "violat[ing] the separation of powers doctrine by
20 'transforming every [executive decisionmaker] into a "mini-
21 legislature" with the power to determine on an ad hoc basis what
22 types of behavior [satisfy their jurisdiction].'" (*People v. Ellison*
23 (1998) 68 Cal.App.4th 203, 211, quoting *People v. Superior Court*
24 (*Caswell*) (1988) 46 Cal.3d 381, 402.)

25 "It is concern about 'encroachment and aggrandizement,' the
26 [United States Supreme Court] reiterated, that has animated its
27 separation of powers jurisprudence. 'Accordingly, we have not
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1 hesitated to strike down provisions of law that either accrete to a
2 single Branch powers more appropriately diffused among separate
3 Branches or that undermine the authority and independence of one or
4 another coordinate Branch." (Kasler v. Lockyer (2000) 23 Cal.4th
5 472, 493, quoting *Mistretta v. United States* (1989) 488 U.S. 361,
6 382.) This articulation of the principle speaks directly to the
7 situation at hand. The Board, by its enactment and interpretation of
8 Title 15, §2402, has appropriated to itself absolute power over
9 'lifer' matters. Overreaching beyond the letter and spirit of the
10 Penal Code provisions, Title 15, §2402(c)(1) has been interpreted by
11 the Board to supply the power to declare every crime enough to deny
12 parole forever. The fact that Title 15, §2402, has been invoked in
13 every case, but then sometime later not invoked, tends to show either
14 completely arbitrary and capricious behavior or that unwritten
15 standards are what really determine outcomes. In either event, all
16 pretenses of taking guidance from, or being limited by, the
17 legislature's statutes have been abandoned. "[I]t is an elementary
18 proposition that statutes control administrative interpretations."
19 (*Ohio Casualty Ins. Co. v. Garamendi* (2006) 137 Cal.App.4th 64, 78.)
20 Title 15 §2402 as applied, however, has no controls or limitations.

21 The PC § 3041(b) exception to the rule can only be invoked when
22 the "gravity of the current convicted offense or offenses, or the
23 timing and gravity of current or past convicted offense or offenses,
24 is such that consideration of the public safety requires a more
25 lengthy period of incarceration for this individual." The word
26 "gravity" is a directive for comparison just as "more lengthy"
27 indicates a deviation from the norm. While *Dannenberg* held there
28

1 does not need to be intra case comparison for the purposes of term
2 uniformity or proportionality, there necessarily has to be some sort
3 of comparison for the purposes of adhering to the legislative mandate
4 that parole is available. The Board employs no meaningful yardstick
5 in measuring parole suitability. This is a violation of the
6 separation of powers doctrine. (People v. Wright (1982) 30 Cal.3d
7 705; 712-713. And see Tarhune v. Superior Court (1998) 65
8 Cal.App.4th 864, 872-873. Compare Whitman v. Am. Trucking Ass'ns
9 (2001) 531 U.S. 457, 472, describing a delegation challenge as
10 existing when the legislature fails to lay down "an intelligible
11 principle to which the person or body authorized to act is directed
12 to conform.")

13
14 RESPONDENT'S POSITION

15 The Attorney General has suggested, without pointing to any
16 concrete examples, that it is possible that the Board, when invoking
17 the crime as a reason to deny parole, is not placing it within
18 62402(c)(1) but instead using it as some sort of 'lesser factor'
19 which, only when combined with other unsuitability criteria, can
20 contribute to a valid parole denial. The two problems with this
21 position are, first, there is no evidentiary support for this
22 assertion, and second, it would have no impact on the constitutional
23 infirmities outlined and proven above.

24 Even if Respondent had produced evidence that the Board was
25 utilizing the crime as a 'lesser factor' which needs others to fully
26 support a parole denial, the Board would then be admitting it was
27 denying parole, in part, for the very reason that the person is
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1 before the panel and eligible for parole in the first place - the
2 commitment offense. Respondent's argument suggests that a crime that
3 only qualified as the *Dannenberg* "minimum necessary" could still be
4 invoked as a reason for denying parole. Respondent argues that when
5 the crime is invoked 'not in the *Dannenberg* sense,' there must be
6 other reasons for the parole denial and the crime alone would not be
7 enough in this context. This position is inconsistent with the law
8 and fundamental logic.

9 A crime qualifies under *Dannenberg* when it is "particularly
10 egregious," or one where "no circumstances of the offense reasonably
11 could be considered more aggravated or violent than the minimum
12 necessary to sustain a conviction for that offense." (*Dannenberg*,
13 *supra*, 34 Cal.4th at pp. 1094-1095.) These are the only two choices.

14 If a crime consists of only the bare elements then it is not
15 aggravated and it cannot, in and-of itself, serve as a basis for
16 parole denials once the inmate becomes eligible for parole. It is
17 the reason an inmate may be incarcerated initially for the equivalent
18 of 15 or 25 years, and then examined to determine rehabilitation
19 efforts when they come before the Board, but a crime that is no more
20 than the bare minimum cannot be factored into the equation pursuant
21 to PC § 3041(b) or any of the case law interpreting it.

22 In oral argument Respondent suggested a second way the
23 commitment offense can be used outside of §2402(c)(1). If for
24 example a crime had its roots in gang allegiances or rivalries and
25 the inmate continued to associate with gangs while incarcerated, then
26 an aspect of the crime, even if the crime otherwise consisted of no
27 more than the minimum elements, could be combined with other behavior
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09/12/2007 11:00

PAGE 23/34

1 to support a parole denial. Similarly, if a crime was rooted in an
2 inmate's then existing drug addiction, and the Board was to point to
3 a recent 115 involving drugs, the evidence that the inmate's drug
4 issues had not been resolved would justify a parole denial even if
5 the crime itself was not aggravated. A finding that the inmate is
6 not suitable for release under these circumstances, however, is not
7 based on the facts of the commitment offense as tending to show
8 unsuitability. It is based on the conclusion that can be drawn about
9 Petitioner's lack of rehabilitation or change since the offense, and
10 thus, his present dangerousness..

11 Respondent has not demonstrated any flaws in Petitioner's
12 methodology or analysis, nor provided any actual evidence of the
13 crime being invoked other than pursuant to §2402(c)(1). Drawing
14 conclusions from the Board's direct statements, or its precise
15 recitations of the §2402(c)(1) language, logically indicates an
16 invocation of §2402(c)(1), and Respondent's suggestion otherwise is
17 insupportable.

18 THE QUESTION OF BIAS

19
20 Because the issue has been squarely presented, and strenuously
21 argued by Petitioners, this Court is obligated to rule on the charge
22 that the Board's actions prove an overriding bias and deliberate
23 corruption of their lawful duties.

24 In the discrimination and bias case of *USPS Bd. of Governors v.*
25 *Aikens* (1983) 460 U.S. 711, the United States Supreme Court
26 acknowledged "there will seldom be 'eyewitness' testimony as to the
27 [] mental processes" of the allegedly biased decisionmaker. Instead,

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1 an examination of other cases for trends or patterns can provide the
2 necessary circumstantial evidence. (See *Aikens, supra*, at footnote
3 2.) Reaffirming that such circumstantial evidence will be sufficient
4 the Court stated: "The law often obliges finders of fact to inquire
5 into a person's state of mind. As Lord Justice Bowen said in
6 treating this problem in an action for misrepresentation nearly a
7 century ago, 'The state of a man's mind is as much a fact as the
8 state of his digestion. It is true that it is very difficult to
9 prove what the state of a man's mind at a particular time is, but if
10 it can be ascertained it is as much a fact as anything else.'"
11 (*Aikens*, at pp. 716-717, quoting *Edgington v. Fitzmaurice* (1885) 29
12 Ch. Div. 459, 483.)'

13 The discovery in these cases was granted in part due to the
14 Petitioners' prima facie showing of bias and the necessity that it be
15 "adequately supported with evidence" if such evidence is available.
16 (*Ramirez, supra*, 94 Cal.App.4th at p. 564, fn. 5. See also *Nasha v.*
17 *City of Los Angeles* (2004) 125 Cal.App.4th 470, 483: "A party seeking
18 to show bias or prejudice on the part of an administrative decision
19 maker is required to prove the same 'with concrete facts.'" And see
20 *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674,
21 841: "The challenge to the fairness of the adjudicator must set forth
22 concrete facts demonstrating bias or prejudice." See also *Hobson v.*

23
24 'As occurred in *Aikens, supra*, and as suggested in prior orders of this Court,
25 Respondent should have provided direct evidence from the decisionmakers. While the
26 fact that a Defendant does not explain his or her actions cannot be held against
27 him, (*Griffin v. California* (1965) 380 U.S. 609, *Doyle v. Ohio* (1976) 426 U.S.
28 610,) it is appropriate to give some weight to the consideration that the Board has
failed to offer any direct evidence or explanation on its own behalf. While the
case of *Hornung v. Superior Court* (2000) 81 Cal.App.4th 1095 stands for the
proposition that Petitioner may not inquire into the Board members mental
processes, Respondent is not precluded from offering such direct evidence if they
were able to testify as to their good faith and conscientious efforts.

1 Hansen (1967) 269 F.Supp. 401, 502, the watershed Washington D.C.
2 school desegregation case in which the court determined from a
3 statistical and factual analysis that racial bias was influencing
4 policy.)

5 In the case of *People v. Adams* (2004) 115 Cal.App.4th 243, 255,
6 a similar claim of biased decision making was asserted and it was
7 rejected because, although the defendant clearly articulated it, "he
8 has not demonstrated it. Therefore, he has failed to bear his burden
9 of showing a constitutional violation as a demonstrable reality, not
10 mere speculation." In the present cases Petitioners have provided
11 overwhelming concrete evidence. It is difficult to believe that the
12 Board's universal application of §2402(c) (1) has been an inadvertent
13 mistake or oversight on their part. It is hard to credit the Board's
14 position that it does not know its own patterns and practices reveal
15 a complete lack of standards or constraints on their power.
16 Respondent's protestations ring hollow, and it seems a statistical
17 impossibility, that the Board's use of "detailed" criteria in such a
18 fashion that they are rendered meaningless is a result of good faith
19 efforts on their part. That every murder is "especially heinous,
20 atrocious or cruel," and can therefore be an exception to the rule
21 that a parole date should be set, does not seem to be an accident on
22 their part.

23 Although no court has thus far agreed with the accusation that
24 the Board approaches its duties with a predetermination and a bias,
25 no court has previously been presented the comprehensive evidence
26 outlined herein. While this Court does not turn a blind eye to the
27 reasonable conclusion that the Board's unconstitutional practices are
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1 willful, there is another possibility. The pattern of errors
2 demonstrated by the discovery in this case, and the continuously
3 growing body of Court of Appeal opinions finding consistent and
4 persistent abuse of discretion, may instead be caused by the fact
5 that the Board is simply overworked and substantively untrained. The
6 impossibility of the blanket applicability of §2402(c)(1) may be only
7 the result of sloppy preparation and inadvertent carelessness.

8 The Board must first be given an opportunity to comply with the
9 necessary remedy provided by this court before it is possible to
10 enter a finding of conscious bias and illegal sub rosa policy. To do
11 otherwise would ignore the complexities and magnitude of the largely
12 discretionary duties with which that Board is vested.

13 14 CONCLUSION

15 The conclusive nature of the proof in this case, and the
16 suggestion of institutional bias do not preclude formulation of an
17 remedy which will guarantee adequate restrictions on, and guidance
18 for, the Board's exercise of discretion in making parole suitability
19 determinations. The Board can be made to lawfully perform its duties
20 if given explicit instructions.

21 As noted supra, a reason the proof in this case irrefutably
22 establishes constitutional violations is because the Board does not,
23 in actual fact, operate within the limiting construction of the
24 regulations. The Board's expansive interpretation allows it to
25 operate without any true standards. Although numerous rulings of
26 both state and federal courts of appeal have invalidated the Board's
27 application of the §2402(c) criteria to particular facts, the Board
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1 does not take guidance from these binding precedents and ignores them
2 for all other purposes. In the most recent of these cases, *In re*
3 *Roderick*, (2007) ___ Cal.App.4th ___ (A113370) the First District
4 held four of five §2402 factors "found" by the Board to be
5 unsupported by any evidence. At footnote 14 the court took the time
6 to criticize the Board for its repeated use of a "stock phrase"
7 "generically across the state." The court also clarified that "at
8 minimum, the Board is responsible for articulating the grounds for
9 its findings and for citing to evidence supporting those grounds."

10 There is nothing in the evidence presented that would allow any
11 conclusion but that, without intervention of the Courts, the Board
12 will ignore the lessons of these rulings in the future and continue
13 to employ its formulaic approach of citing a criteria from
14 §2402(c) (1), repeating the facts of the crime, but never
15 demonstrating a logical connection between the two. This is the
16 core problem with the Board's methodology -- they provide no
17 explanation or rationale for the findings regarding the crime itself.

18 This practice results in violence to the requirements of due
19 process and individualized consideration which are paramount to the
20 appropriate exercise of its broad discretion.

21 The only solution is one that compels the Board to identify the
22 logical connection between the facts upon which it relies and the
23 specific criteria found to apply in the individual case. For
24 example, the Board often finds that an inmate's motive is "trivial"
25 without ever suggesting why, on these facts, that motive is not just
26 as trivial as the motive behind any other murder. What motive is not
27 trivial? By any definition "trivial" is a word of comparison and
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1 only has meaning when there can be examples that are not "trivial."

2 Similarly, although the Sixth District made it plain four years
3 ago that "all [] murders by definition involve some callousness," (In
4 re Smith (2003) 114 Cal.App.4th 343, 345,) the Board has continued to
5 deny countless paroles labeling the crime "callous" without ever
6 suggesting what crime would not qualify as "callous" and without
7 consistently explaining why the individual case before it
8 demonstrates "exceptional" callousness.

9 Respondent has consistently refused to suggest what possible
10 instances of murder would not fit the Board's amorphous application
11 of the §2402 criteria. Citing Dannenberg, Respondent insists such
12 comparative analysis is unnecessary. Respondent fundamentally
13 misunderstands the Dannenberg holding.

14 The PC § 3041(b) exception to the rule can only be invoked when
15 the "gravity of the current convicted offense or offenses, or the
16 timing and gravity of current or past convicted offense or offenses,
17 is such that consideration of the public safety requires a more
18 lengthy period of incarceration for this individual." The word
19 "gravity" is a directive for comparison just as "more lengthy"
20 indicates a deviation from the norm. While Dannenberg held there
21 does not need to be intra case comparison for the purposes of term
22 uniformity or proportionality, there necessarily has to be some sort
23 of comparison for the purposes of adhering to the legislative mandate
24 that parole is available. This is implicit in §2402 because the
25 qualifier "especially," in "especially heinous atrocious or cruel,"
26 requires that some form of comparison be made. While the original
27 drafters of §2402 seemed to have recognized this fact, the ongoing
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09/12/2007 11:00

PAGE 29/34

1 conduct of the Board has completely ignored it, and this is the
2 essence of the due process violation Petitioners have asserted.

3 As noted in his dissent in the recent case of *In re Roderick*,
4 *supra*, Justice Sepulveda would have deferred to the Board's
5 'exercise' of discretion because "Board members have both training
6 and vast experience in this field. They conduct literally thousands
7 of parole suitability hearings each year. The Board therefore has
8 the opportunity to evaluate the egregiousness of the facts of a great
9 number of commitment offenses. ... The Board's training and
10 experience in evaluating these circumstances far exceeds that of
11 most, if not all, judges." The evidence in this case, however,
12 suggests a flaw in granting such deference. Since the Board
13 continues to place every murder in the category of offenses "tending
14 to show unsuitability," something is certainly wrong. Since the
15 Board's vast experience is undeniable, the problem must be in the
16 Board's training and understanding of the distinguishing features of
17 the guidelines and criteria. Although Justice Sepulveda presumes
18 that Board members receive substantive training, there is no evidence
19 before this court to suggest that it does, and substantial
20 circumstantial evidence to suggest that it does not.

21 In the vast numbers of Santa Clara County cases reviewed by this
22 Court, the Board's formulaic decisions regarding the commitment
23 offense do not contain any explanation or thoughtful reasoning.
24 Instead, the Board's conclusionary invocation of words from
25 §2402(c)(1) is linked to a repetition of the facts from the Board
26 report by the stock phrase: "These conclusions are drawn from the
27 statement of facts wherein ..." Thereafter the inmate files a habeas
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1 corpus petition and Respondent, after requesting an extension of
2 time, files a boilerplate reply asserting the Board's power is
3 "great" and "almost unlimited" and thus any "modicum" of evidence
4 suffices. Respondent does not cite or distinguish the expanding body
5 of case law that is often directly on point as to specific findings
6 made. Thereafter, if the writ is granted, the Board is directed to
7 conduct a new hearing "in compliance with due process" and that order
8 is appealed by Respondent. On appeal the order is usually upheld
9 with modifications and in the end, after countless hours of attorney
10 and judicial time, the Board conducts a new two hour hearing at which
11 they abuse their discretion and violate due process in some different
12 way. ~~XXXX~~

13 This system is malfunctioning and must be repaired. The
14 solution must begin with the source of the problem. The Board must
15 make efforts to comply with due process in the first instance. The
16 case law published over the last five years provides ample and
17 sufficient guidelines and must be followed. Although the Board
18 methods suggest it believes this to be optional, it is not.
19

20 THE REMEDY

21 Thus; it is the order of this Court that the Board develop,
22 submit for approval, and then institute a training policy for its
23 members based on the current and expanding body of published state,
24 and federal, case law reviewing parole suitability decisions, and
25 specifically the application of §2402 criteria. In addition to
26 developing guidelines and further criteria for the substantive
27 application of §2402 the Board must develop rules, policies and
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1 procedures to ensure that the substantive guidelines are followed..

2 This Court finds its authority to impose this remedy to flow
3 from the fundamental principles of judicial review announced over two
4 centuries ago in *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137.
5 Citing that landmark case, the California Supreme Court has
6 recognized "Under time-honored principles of the common law, these
7 incidents of the parole applicant's right to 'due consideration'
8 cannot exist in any practical sense unless there also exists a remedy
9 against their abrogation." (*In re Sturm* (1974) 11 Cal.3d 258, 268.)

10 In *Sturm* the court directed that the Board modify its rules and
11 procedures so that thereafter "The Authority will be required [,]
12 commencing with the finality of this opinion, to support all its
13 denials of parole with a written, definitive statement of its reasons
14 therefor and to communicate such statement to the inmate concerned."
15 (*Sturm* at p. 273.)

16 Similarly, in the case of *Minnis, supra*, the California Supreme
17 Court held the Board's policy of categorically denying parole to drug
18 dealers was illegal. Based on its analysis the court there was
19 clearly prepared to order that Board to modify its rules and
20 procedures however such was unnecessary because the Board
21 "voluntarily rescinded" the illegal policy. While the remedy in this
22 case is of greater scope than that necessary in either *Sturm* or
23 *Minnis, supra*, so too has been the showing of a systematic abuse of
24 discretion and distortion of process.

25 The most recent case to address the court's roles and duties in
26 overseeing the parole suitability process has been *In re Rosenkrantz*,
27 *supra*, 29 Cal.4th 616. In that case the court explained that
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1 judicial review of a Governor's parole determination comports with,
2 and indeed furthers, separation of powers principles because the
3 courts are not exercising "complete power" over the executive branch
4 and do not "defeat or materially impair" the appropriate exercise or
5 scope of executive duties. (Rosenkrantz at p. 662.) Citing Strum,
6 supra, the court reaffirmed that a life term inmate's "due process
7 rights cannot exist in any practical sense without a remedy against
8 its abrogation." (Rosenkrantz at p. 664.)

9 The Rosenkrantz court also put forth what it believed was an
10 extreme example but which, unfortunately, has been shown to exist in
11 this case. The court stated: "In the present context, for example,
12 judicial review could prevent a Governor from usurping the
13 legislative power, in the event a Governor failed to observe the
14 constitutionally specified limitations upon the parole review
15 authority imposed by the voters and the Legislature." This is
16 exactly what the evidence in this case has proven. As noted above,
17 the Board has arrogated to itself absolute authority, despite
18 legislative limitations and presumptions, through the mechanism of a
19 vague and all inclusive, and thus truly meaningless, application of
20 standards. The remedy this Court is imposing is narrowly tailored to
21 redress this constitutional violation.

22 The consequence of the Board's actions (of giving § 2402(c)(1)
23 such a broadly all encompassing and universal application) is that
24 they have unwittingly invalidated the basis of the California Supreme
25 Court's holding in *Dannenberg*. The reason the four justice majority
26 in *Dannenberg* upheld the Board's standard operating procedures in the
27 face of the Court of Appeal and dissent position is because "the
28

1 Board must apply detailed standards when evaluating whether an
2 individual inmate is unsuitable for parole on public safety grounds."
3 (Dannenberg at p. 1096, footnote 16. See also page 1080: "the
4 regulations do set detailed standards and criteria for determining
5 whether a murderer with an indeterminate life sentence is suitable
6 for parole.") However, Petitioners in these cases have proven that
7 there are no "detailed standards" at all. Instead the Board has
8 systematically reduced the "detailed standards" to empty words. The
9 remedy this Court orders, that there truly be "detailed standards,"
10 requires the promulgation of further rules and procedures to
11 constrain and guide the Board's powers. This remedy differs in
12 specifics, but not in kind, from what courts have previously imposed
13 and have always had the power to impose.

14 The Board must fashion a training program and further rules,
15 standards and regulations based on the opinions and decisions of the
16 state and federal court cases which provide a limiting construction
17 to the criteria which are applied.⁸ The Board must also make
18 provisions for the continuing education of its commissioners as new
19 case law is published and becomes binding authority. This Court will
20 not, at this point, outline the requirements and lessons to be taken
21 from the above cases. It is the Board's duty, in the first instance
22 to undertake this task. The training program, and associated rules
23 and regulations, shall be served and submitted to this Court, in

24 ⁸While the showing and analysis in this case was limited to § 2402(c)(1), the
25 conclusions that the evidence compelled, that the Board has been carelessly
26 distorting and misapplying the regulations, is not so limited. Accordingly, the
27 training program that is necessary for the Board can not reasonably be limited to
28 just § 2402(c)(1). Thus, to the extent case law recognizes, clarifies and
establishes remedies for other due process violations they must also be
incorporated into the necessary rules and training the Board is required to abide
by.

1 writing, within 90 days. Counsel for Petitioners, and any other
2 interested parties, may submit briefs or comments within 30 days
3 thereafter. After receipt and review of the materials this Court
4 will finalize the training program, and associated rules, and the
5 Petitioners in these cases shall receive a new hearing before a Board
6 that does not operate with the unfettered discretion and caprice
7 demonstrated by the evidence here presented.

8 ORDER

9 For the above reasons the habeas corpus petition is granted and
10 it is hereby ordered that Petitioner be provide a new hearing which
11 shall comply with due process as outlined above. Respondent shall
12 provide weekly updates to this Court on the progress of its
13 development of the new rules and regulations outlined above.

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16
17 DATED: Aug 30, 2007

Linda R. Condron
LINDA R. CONDRON
JUDGE OF THE SUPERIOR COURT

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19
20 cc: Petitioner's Attorney (Jacob Burland)
21 Attorney General (Denise Yates, Scott Mather)



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 LESLIE A. BYRD,

No. C 07-06375 SBA (PR)

5 Petitioner,

ORDER OF TRANSFER

6 v.

7 ROBERT J. HERNANDEZ, Warden,

8 Respondent.
9 _____/

10 Petitioner, a state prisoner, has filed a pro se petition for a writ of habeas corpus pursuant to
11 28 U.S.C. § 2254, challenging as a violation of his constitutional rights the denial of parole by the
12 California Board of Parole Hearings.¹ He has paid the filing fee.

13 A petition for a writ of habeas corpus filed by a state prisoner in a State that contains two or
14 more federal judicial districts may be filed in either the district of confinement or the district of
15 conviction. See 28 U.S.C. § 2241(d). The district court where the petition is filed, however, may
16 transfer the petition to the other district in the furtherance of justice. See id. Federal courts in
17 California traditionally have chosen to hear petitions challenging a conviction or sentence in the
18 district of conviction. See Dannenberg v. Ingle, 831 F. Supp. 767, 767 (N.D. Cal. 1993); Laue v.
19 Nelson, 279 F. Supp. 265, 266 (N.D. Cal. 1968). But if a habeas petition is directed to the manner in
20 which a sentence is being executed, e.g., if it involves parole or time credit claims, the district of
21 confinement is the preferable forum. See Habeas L.R. 2254-3(a); Dunne v. Henman, 875 F.2d 244,
22 249 (9th Cir. 1989).

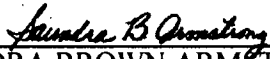
23 Petitioner is incarcerated at the R.J. Donovan Correctional Facility, which lies within the
24 venue of the Southern District of California. See 28 U.S.C. § 84. Because Petitioner challenges the
25 execution of his sentence, the Court hereby ORDERS that pursuant to 28 U.S.C. § 1404(a) and
26

27 _____
28 ¹ The Board of Prison Terms was abolished effective July 1, 2005, and replaced with the Board
of Parole Hearings. Cal. Penal Code § 5075(a).

1 Habeas L.R. 2254-3(b), and in the interests of justice, this petition be TRANSFERRED to the
2 United States District Court for the Southern District of California.

3 IT IS SO ORDERED.

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5 DATED: 3/13/08


- SAUNDRA BROWN ARMSTRONG
United States District Judge

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LESLIE A. BYRD,
Plaintiff,

Case Number: CV07-06375 SBA

CERTIFICATE OF SERVICE

v.

ROBERT J. HERNANDEZ et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 14, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Leslie A. Byrd D-30420
R.J. Donovan Correctional Facility
480 Alta Rd.
San Diego, CA 92179

Dated: March 14, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LESLIE A. BYRD,
Petitioner,

No. C 07-06375 SBA (PR)

ORDER OF TRANSFER

v.

ROBERT J. HERNANDEZ, Warden,
Respondent.

Petitioner, a state prisoner, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging as a violation of his constitutional rights the denial of parole by the California Board of Parole Hearings.¹ He has paid the filing fee.

A petition for a writ of habeas corpus filed by a state prisoner in a State that contains two or more federal judicial districts may be filed in either the district of confinement or the district of conviction. See 28 U.S.C. § 2241(d). The district court where the petition is filed, however, may transfer the petition to the other district in the furtherance of justice. See id. Federal courts in California traditionally have chosen to hear petitions challenging a conviction or sentence in the district of conviction. See Dannenberg v. Ingle, 831 F. Supp. 767, 767 (N.D. Cal. 1993); Laue v. Nelson, 279 F. Supp. 265, 266 (N.D. Cal. 1968). But if a habeas petition is directed to the manner in which a sentence is being executed, e.g., if it involves parole or time credit claims, the district of confinement is the preferable forum. See Habeas L.R. 2254-3(a); Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989).

Petitioner is incarcerated at the R.J. Donovan Correctional Facility, which lies within the venue of the Southern District of California. See 28 U.S.C. § 84. Because Petitioner challenges the execution of his sentence, the Court hereby ORDERS that pursuant to 28 U.S.C. § 1404(a) and

¹ The Board of Prison Terms was abolished effective July 1, 2005, and replaced with the Board of Parole Hearings. Cal. Penal Code § 5075(a).

1 Habeas L.R. 2254-3(b), and in the interests of justice, this petition be TRANSFERRED to the
2 United States District Court for the Southern District of California.

3 IT IS SO ORDERED.

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5 DATED: 3/13/08


6 SAUNDRA BROWN ARMSTRONG
7 United States District Judge
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United States District Court
For the Northern District of California

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LESLIE A. BYRD,
Plaintiff,

Case Number: CV07-06375 SBA

CERTIFICATE OF SERVICE

v.

ROBERT J. HERNANDEZ et al,
Defendant.

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That on March 14, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Leslie A. Byrd D-30420
R.J. Donovan Correctional Facility
480 Alta Rd.
San Diego, CA 92179

Dated: March 14, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

UNITED STATES DISTRICT COURT
Northern District of California
1301 Clay Street
Oakland, California 94612

www.cand.uscourts.gov

Richard W. Wieking
Clerk

General Court Number
510.637.3530

April 1, 2008

U.S. District Court, Southern District of CA
4290 Edward J. Schwartz Federal Building
880 Front Street
San Diego, CA 92101-8900

RE: CV 07-06375 SBA LESLIE A. BYRD-v-ROBERT J. HERNANDEZ

Dear Clerk,

Pursuant to an order transferring the above captioned case to your court, transmitted herewith are:

- ☒ Certified copy of docket entries.
- ☒ Certified copy of Transferral Order.
- ☒ Original case file documents.
- ☒ Please access the electronic case file for additional pleadings you may need. See the attached instructions for details.

Please acknowledge receipt of the above documents on the attached copy of this letter.

Sincerely,
RICHARD W. WIEKING, Clerk

by: /s/
Jessie Mosley
Case Systems Administrator

Enclosures
Copies to counsel of record

JS44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1984, is required for the use of the Clerk of Court for the purpose of initiating the filing of a case. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Leslie A. Byrd

Robert J. Hernandez, Warden **DEPUTY****FILED**

APR 9 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)Court ☒ Pro Se

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Leslie A. Byrd
480 Alta Road
San Diego, CA 92179
D-30420

ATTORNEYS (IF KNOWN)

'08 CV 0651 JM AJB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

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| PT | DEF | | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Citizen of This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Citizen of Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | | Incorporated or Principal Place of Business in This State | | |
| | | Incorporated and Principal Place of Business in Another State | | |
| | | Foreign Nation | | |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☒ 5 Transferred from another district (specify) Northern CA. ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 4/9/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Mullen